CONGRESSIONAL ETHICS REFORM

HEARINGS

BEFORE THE

BIPARTISAN TASK FORCE ON ETHICS U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

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CONTENTS

HEARINGS

CONGRESSIONAL ETHICS RULES: MAY 3, 1989

Statements of: Page
- Anderson, Hon. John B., a former U.S. Representative from the State of Illinois 24
- Bennett, Hon. Charles E., a U.S. Representative from the State of Florida 11
- Buchanan, Hon. John H., Jr., a former U.S. Representative from the State of Alabama 28
- Edwards, Hon. Don, a U.S. Representative from the State of California 14
- Frenzel, Hon. Bill, a U.S. Representative from the State of Minnesota 3
- Hamilton, Hon. Lee H., a U.S. Representative from the State of Indiana ... 17
- Pike, Hon. Otis G., a former U.S. Representative from the State of New York 31
- Whalen, Hon. Charles W., a former U.S. Representative from the State of Ohio 36

ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD

Bennett, Hon. Charles E., a U.S. Representative from the State of Florida 49
Edwards, Hon. Don, a U.S. Representative from the State of California, letter to Hon. Vic Fazio 52
Preyer, L. Richardson, a former U.S. Representative from the State of North Carolina 54

THE ADMINISTRATION'S ETHICS PROPOSALS AND CONGRESSIONAL STANDARDS OF CONDUCT: MAY 24, 1989

Statments of:
- Cutler, Lloyd N., a member of the Wilkey Commission and Attorney at Law, Wilmer, Cutler & Pickering 89
- Dennis, Edward S.G., Jr., Assistant Attorney General, Criminal Division, Department of Justice 64
- Kirby, James C., Jr., Professor of Law, University of Tennessee 121
- Mathias, Hon. Charles McC., Jr., a former U.S. Senator from the State of Maryland and member of the Volcker Commission 62
- Neuman, Nancy M., a member of the Volcker Commission and president, League of Women Voters 91
- Ornstein, Norman J., a member of the Volcker Commission and Resident Scholar, American Enterprise Institute 125
- Thompson, Dennis F., Professor of Political Philosophy, Kennedy School of Government, Harvard University 110

ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD

Dennis, Edward S.G., Jr., Assistant Attorney General, Criminal Division, Department of Justice 66
Thompson, Dennis F., Professor of Political Philosophy, Harvard University 113

ENFORCEMENT PROCEDURES: JULY 12, 1989

Statements of:
- Nields, John, Jr., Attorney at Law, Howrey & Simon 141
- Oldaker, William C., Attorney at Law, Manatt, Phelps, Rothenberg & Evans 144

ADDITIONAL STATEMENT SUBMITTED FOR THE RECORD Page

Campbell, Frank A.W., Attorney at Law 163

CONGRESSIONAL ETHICS AND THE ROLE OF THE MEDIA: SEPTEMBER 20, 1989

Statements of:
- Bode, Ken, Director, Center for Contemporary Media, DePauw University 248
- Fritz, Sara, congressional correspondent, the Los Angeles Times 244
- Hess, Stephen, Senior Fellow, the Brookings Institution 210
- Jennings, Bruce, Associate for Policy Studies, the Hastings Center 206
- Josephson, Michael, President, Josephson Institute for the Advancement of Ethics 214
- Oliphant, Tom, Columnist, the Boston Globe 243

ADDITIONAL STATEMENT SUBMITTED FOR THE RECORD

Hess, Stephen, Senior Fellow, the Brookings Institution 222

HEARING ON CONGRESSIONAL ETHICS RULES

WEDNESDAY, MAY 3, 1989

U.S. House of Representatives,
Bipartisan Task Force on Ethics,
Washington, DC.

The task force met, pursuant to notice, at 9:08 a.m., in room 2359, Rayburn House Office Building, Hon. Vic Fazio (chairman of the task force) presiding.

Present: Representatives Fazio, Martin, Obey, Stokes, Frost, Bonior, Gillmor, Livingston, Sundquist, Morrison, and McCollum (ex officio).

Mr. Fazio. I would like to welcome all of you to the first hearing of the Bipartisan Task Force on Ethics. Today's hearing, with testimony from some of our most distinguished colleagues and former colleagues, will focus on the general subject of Congressional ethics and any problems or inadequacies in current rules.

The Bipartisan Task Force on Ethics was appointed in February to conduct the first comprehensive review in 12 years of the House Ethics Code. The task force is charged with reviewing all rules, regulations, and statutes governing the official conduct of Members of the House, and recommending changes that will both enhance Members' understanding and compliance with the rules and increase public respect for the integrity of the institution.

Representative Lynn Martin is co-chair of the task force and will be joining us shortly. I'm going to place her remarks in the record immediately after mine. The other members are Representative David Bonior, Representative David Obey, who is here, Representative Louis Stokes who is also with us, and Representative Martin Frost. Representative Paul Gillmor, Representative Bob Livingston, Representative Don Sundquist and Representative Sid Morrison are the Republican members on this equally balanced panel. Ex officio members are the Majority Leader, Tom Foley, the Majority Whip, Tony Coelho, the Republican Conference Chairman, Jerry Lewis, and Vice Chairman of the Republican Conference, Bill McCollum.

To date, the task force has had several meetings, primarily for organizational purposes and for background briefings on past ethics reform efforts. We have also invited the comments and suggestions of all members through a written survey and we look forward to their continuing bipartisan advice. It is in the spirit of bipartisanship and cooperation among the membership that we approach this important task.

With today's hearing we begin the public phase of our deliberations. This is the first in a series of public hearings over the next several weeks to hear the views of current and former Members of Congress, the President's Ethics Commission, known as the Wilkey Commission, the Commission on Public Service, chaired by Paul Volcker, and various public witnesses.

The task force intends to conduct a thorough review of all ethics rules and regulations. Some of the areas we will address include financial disclosure requirements, honoraria and outside earned income, acceptance of gifts, use of official resources, and the role of the Ethics Committee.

Our inquiry is not aimed at any specific rules violations, nor is it directly related to any past or ongoing ethics investigations. The problems Members have encountered in recent years, often resulting from an honest misunderstanding of the rules, can be instructive in preventing future problems through greater clarification, education of Members and staff, and other efforts to achieve better compliance with the ethics rules.

We are fortunate to have as our witnesses this morning a very distinguished panel of Members who have played a key role over the years in development of the House Ethics Code.

Representative Charles Bennett is the author of the original Code of Ethics for Government Service in 1958 and was Chairman of the first Ethics Committee in the 89th Congress, and again in the 96th Congress. Representative Lee Hamilton served on the Obey Commission 12 years ago and chaired the Commission's Task Force that developed the new ethics code. Representative Bill Frenzel, who will be our lead-off witness, was the Ranking Minority Member of the Obey Commission and played an active role in the reform debate. Representative Don Edwards chaired a Democratic Caucus Task Force in the 96th Congress that studied the Ethics Committee's disciplinary procedures.

Our second panel includes some of the most highly respected Members that have served in this institution. Unfortunately, Rich Preyer, who chaired the Select Committee on Ethics in the 95th Congress and guided the implementation of the new ethics rules, is ill and was unable to travel to Washington today to be with us. We are disappointed by his absence and wish him a quick recovery. His prepared statement will be included in the record.

[The prepared statement of Mr. Preyer is in the Additional Statements Submitted for the Record.]

Our other distinguished former colleagues who are going to be with us this morning are Otis Pike, who served 18 years in the House and was a vigorous opponent of the new ethics rules some 12 years ago; John Anderson, who served for 20 years before seeking the Presidency in 1980; John Buchanan, who served for 16 years; and Charles Whalen, who served for 12 years. All of these former Members participated in the deliberations on Congressional ethics in years past and have different views and perspectives on these issues.

We appreciate all of you taking the time to share your thoughts and ideas with the task force this morning. We look forward to an interesting morning of discussion and deliberation.

I will insert in the record at this point the opening statement of my co-chair Lynn Martin, who will be here shortly.

[The prepared statement of Mrs. Martin follows:]

Opening Statement of Hon. Lynn Martin, Bipartisan Task Force on Ethics

Mr. Chairman, two hundred years ago, in the First Congress, Senator William Maclay of Pennsylvania observed, and I quote:

"I came here expecting every man to act the part of a god; that the most delicate honor, the most exalted wisdom, the most refined generosity, was to govern every act and be seen in every deed. What must my feelings be on finding rough and rude manners, glaring folly, and the basest selfishness apparent in almost every public transaction."

End quote. I would hasten to point out that he was obviously talking about the Senate, and that we've obviously come a long way since. But he did put his finger on something which we still see today, and that is that many expect us to act like gods when in fact we are mere mortals who are fairly representative of the American people—the good, the bad and the ugly. And like the American people, the vast majority of Members are decent, hardworking and honest. And as our joint statement notes, the vast majority of Members abide by the highest ethical standards and are committed to the principle that public office is a public trust.

James Madison wrote in the Federalist #51 that if men were angels we wouldn't need government, and if we were governed by angels we wouldn't need external and internal controls on government. But since we are a government of men over men, Madison wrote, "you must first enable the government to control the governed and in the next place oblige it to control itself." Madison saw a dependence on the people as the primary control on government, but he added, "experience has taught mankind the necessity of auxiliary precautions."

That is why the Founders gave each House authority to make its own rules, punish its Members for disorderly behavior, and by a two-thirds vote expel a Member. That is why we now have a Code of Official Conduct and an ethics committee to enforce that code. And that is why we are here today to review those standards and enforcement mechanisms. We want to determine whether our "auxiliary precautions" to control abuses are working properly, and if not, how we can improve on them.

When I accepted this assignment from my leadership I made it clear that I had no intention of taking it unless the bipartisan leadership was serious about us making a significant contribution—of really accomplishing something constructive and positive. The chairman and I both have those assurances from our leadership and we are proceeding with that understanding.

We have an outstanding bipartisan group of Members who have already demonstrated in our preliminary discussions that they are intent on working together for the good of the institution and the goal of increasing public respect for the Congress. I am confident that with the benefit of the views and recommendations of current and former Members, such as those testifying today, and knowledgeable public experts and others who will follow, that we can make a difference in clarifying and strengthening our standards of conduct. And with that should come both greater Member compliance and greater public trust in their House of Representatives.

Mr. Fazio. Let me welcome our friend Bill Frenzel.

Bill, I know you have some responsibilities in the Republican Conference that you wish to perform regarding the budget as ranking member of the committee. We do appreciate your willingness to appear before us this morning. Please proceed.

STATEMENT OF HON. BILL FRENZEL, A U.S. REPRESENTATIVE FROM THE STATE OF MINNESOTA

Mr. Frenzel. Mr. Chairman, thank you very much for inviting us.

I am going to just go through some ideas from the agenda that you have presented. I am unfortunately disorganized so that I do not have a formal statement to give you.

Let me begin with honoraria and outside income. There is currently a great passion for getting rid of honoraria and outside income. I do not happen to share that passion.

I do not see anything inherently seditious or corrupting in the system. Obviously, you are not going to raise the limit. It should be harmonized between the House and Senate.

Let me say that when we proposed the original limitation, I voted against the restriction on honoraria and outside income. I still believe that you ought to be able to manage the farm or even participate in some of the management of the business that you leave behind and you ought to be paid for doing that in whatever form you get it, whether dividends, salary, or whatever.

I also note that for those of us who are lucky enough to be possessed of other assets, we can of course receive so-called unearned income, but we can not earn any. It seems to me that the current restriction is satisfactory to prevent undue interest in outside activities which might divert one from Congressional effort.

I also believe that the disclosure provisions, which I will have some thoughts on in a minute, are satisfactory to alert the constituency so that it can make a decision as to whether you are spending too much time running the farm or the business or making speeches or writing books instead of attending to legislative business. I believe that the thought that all honoraria is bad is a little bit overblown, a theory held by those who believe in the devil theory of history, that something is always bad if one is not controlling it.

I would like to go on to gifts very briefly, Mr. Chairman, because you and some other members of your committee, Mr. Lewis for one, and I, got involved in a gift symposium last year, and I believe that the work of that ad hoc committee, which you can report to your full committee, was a good way to look at harmonizing or rationalizing at least three different ways we have of looking at gifts for Members of Congress.

The same is true for travel expenses of members when paid by entities outside of the Congress. We do need to establish some limits and a rule of reason. Again, that ad hoc committee at least did some good background work from which this committee might want to work.

I talked earlier about financial disclosure. I think our financial disclosure forms are pretty nonsensical. Those of you who are now doing them—they are due May 15th—will understand some of these problems.

In the first place, they require a welter of detail which is quite enough so that the press can not evaluate them, nor can our constituents. As a result, at least in my area, we are always rated as whoever looks like they are the richest member of the delegation and whoever looks like the poorest member of the delegation. One never wants to be either one of those, but wants rather hopefully to be lost in the middle. Then you get no untoward publicity.

It is a stupid kind of arrangement. In the first place, there should be some de minimis figures. If you have assets in the value of $10,000 or less, they should not even be a part of the report. It is absurd.

I recall one personal adventure where a dear relative held 100 shares of American Telephone and Telegraph. By the time Judge Greene got through with it, it required about 40 transaction listings on the stupid report because it got converted into some shares, which in turn needed to be sold or consolidated. It was just an idiotic series of reports.

I believe the whole transaction register should be canned. It is silly. You can record sales, but your purchases are going to be recorded in the asset list anyway. They are going to be picked up. I think to do transactions is just silly.

I also believe that we have a ridiculous concentration at the low end of the asset and income scale where you try to discern between a $5,000 asset and a $25,000 asset. That really is not what the public is looking for. All it does is satisfy the prurient interests of those who would like to peer into your portfolio.

I do recall that when we began doing these things, there was a rash of housebreaking in the Washington area. Those Members who had revealed more assets than others were, of course, subjected to more housebreakings than others.

I believe that there ought to be much wider distinctions at the low end of the asset scale and perhaps a little narrower at the top end of the scale. I assume it is the great large holdings that are supposed to be of greater importance. I would suggest broadening at the bottom and narrowing at the top if some people think that is necessary.

I feel the same way about the unearned income reports. I think there ought to be some de minimis number which is a good deal higher than what we have now and that we ought to concentrate on the higher numbers.

I would like to skip over to franking, Mr. Chairman, and suggest that franking is the real disgrace of the Congress at the moment. You chair the committee that has to fund that exercise, so you are more aware of it than I am. I do not want to beat on it, but I believe that until the Congress, both House and Senate, establishes individual expense limitations for franking, we will have no real control over what I believe is an abuse of the spirit of the frank.

Everybody knows about postal patrons, about mailing notices of town meetings, whether you appear at them or not, where you spray them all over the district. I personally believe that postal patrons are a thing of the past and can not be controlled—therefore, they ought to be eliminated.

I also believe that there ought to be some limit on automatic letters, but I believe the ultimate limit needs to be a dollar amount for each member, for which that member is accountable. The Senate had such a system for awhile until we found out that they were switching those dollar amounts between those who were not up for reelection and those who were. Obviously, that is one of the real difficulties.

I suggest also that the Franking Commission on which I serve as the Ranking Member, is the wrong outfit to manage this problem. Rather, it should be managed by your subcommittee or by the Standards Committee. What we have are the foxes in charge of the chicken coops, and I do not believe that people have confidence in my Franking Commission.

It is the three-and-three commission which typically deadlocks on any tough problem. It really is a protective agency rather than any kind of an enforcement agency.

I would like to jump to post-employment restrictions. I happen to be one of those who believes in a citizens' legislature and a citizens' government. I believe there ought to be the least possible restrictions on people going in and out. I really believe that for elected officials.

I do not happen to be a lawyer and it is unlikely that I will ever have a job that forces me to deal with the Congress, its agencies, or even the Federal Government. Yet, I think that those who want to take those jobs ought to have some kind of relatively easy ingress.

I do not object to restricting people from dealing with their former committees, both Members and staff, for a limited time. But I do not believe in any broad restrictions of second-class citizenship which will inhibit the attractiveness or reduce the attractiveness of either service in the Congress or in the Executive Branch.

As you know, we are about to get a deal from the President which will further restrict both. In my judgment, that is a mistaken effort. If you look at this Administration, it has been slowest to fill positions of any in history. The next Administration will never fill its appointed positions if we go ahead with conflict of interest laws and the reporting that is necessary.

Going to committee travel, Mr. Chairman, right now Members of Congress are forced to report the use of funds for government aircraft in dollar amounts that are essentially nonsensical. We are given the cost of the whole airplane, divided by the number of Members, times the hours in the air.

It makes you look like you have spent all the money in the world for a service in which the airplane was going to be in the air anyway carrying somebody else around if not you. The employees were on the payroll, the airplane was bought, and you are talking about a little marginal cost which is normally billed to us anyway for food. Maybe there ought to be a soap and toilet paper charge. I believe we ought to report the use of the aircraft, where you went, what you did, but not try to estimate the marginal cost for Congressional use over the government's normal ownership.

Also with respect to travel, I believe the lame duck rule is important and ought to be enforced. I don't know whether it is or not, but we ought to have somebody trying to enforce it.

I have no position on confidential information because I do not like to get it. I can not help you on that.

With respect to an independent counsel to cover Congress, I do not like the independent counsel covering the Executive Branch. I just hate to see people investigated for years by entities with an unlimited dip into the Federal Treasury. I think that there has to be some limitation on what these counsels can do.

I suppose that if we have them for the Executive Branch, we ought to have them for the Legislative Branch, but I really shudder about both of them. Once you bring in an independent counsel, that counsel is told to go get somebody, and he is going to stay around, spend all the money, and hire everybody he needs, until he gets someone, whether we need him or not. In my judgment it is questionable and ought to be looked into very carefully.

I think the most important single credibility move we could take quickly is to take that noxious 1979 grandfather clause on the personal use of campaign funds by Members and eliminate it. We now have a majority of Members in the Congress who do not qualify for that grandfather. Of those of us who do, probably a majority of us would be delighted to get rid of it. We do not intend to use those funds personally anyway.

I also believe that the particular committee that has jurisdiction ought to look into distinctions between political spending and official spending to be sure the line is drawn clearly enough. One of the big efforts of David Obey's Commission, on which I was fortunate enough to serve, was to try to distinguish between legislative expenses and outside private expenses. I think we need to be a little more careful to delineate political expense and official expense. Maybe we ought to begin working on that.

We have also had a little problem with staff performance of duties and where the staff performs those duties. We now have a certification in which we say that this person was working for us.

I think that certification needs to be a little more focused as to where the person was working. Then we will get rid of the problems that we have had that somebody was performing services off campus or in another city or whatever. Those services may be legitimate, but they ought to be identified so that everybody knows what the score is.

Finally, I want to make the last point on the Standards of Official Conduct Committee and what I call due process. You saw in the Tower operation and in the Wright operation a situation where we basically had an indictment and then a trial.

During the indictment proceedings, the accused had no ability to know what was being said. Meanwhile, what was being said was either being reported or leaked. At the end of the indictment period, that is the leaking of the FBI report in one case or the indictment of the committee in the second case, the press simply declares whoever the accused is to be guilty.

No amount of future effort on the part of anybody is going to say that the reports of each village idiot about John Tower or the reports of the investigator in the case of Jim Wright are rebuttable. To me that is unfair. It is kind of a grand jury process. Again, I am not a lawyer and I don't understand these things, but I do understand that whoever the accused is, he is not getting what I would call due process under the kind of American system that I believe we ought to be using.

There is no way to stop leaking, and somehow, the accused has to be in on things and able to rebut when there are these leaks. Maybe better than that, we ought to have a trial right from the beginning instead of doing the indictment process.

Mr. Chairman, I have taken more time than you probably wanted to use on this. You are in a really important bit of work here.

I served on the Obey Commission and Rich Preyer's committee. I was dissatisfied despite great work on both of those. Nobody is ever going to be completely satisfied with what you do, but it is timely that we go again.

A couple of things—the public has to know what we are doing. The second thing is, let's not build a box from which we will insulate ourselves from having good talent in the Congress and in the

Executive Branch in the future. Let's have the maximum flexibility we possibly can.

Thank you very much, Mr. Chairman.

Mr. **Fazio.** Bill, how much time do you have?

Mr. **Frenzel.** I have about 10 minutes.

Mr. **Fazio.** I think that maybe some of us would like to use those 10 minutes for questions before the others come up.

Following up your last point, do you think it would be appropriate to have another committee or subcommittee of the Ethics Committee carrying on the second phase when you have a different standard of proof, when in fact you may have had a grand jury proceeding leading up to, in effect, a jury trial? Do you think that would be appropriate?

Mr. **Frenzel.** Mr. Chairman, I can not help you on that. I have never served on that committee and my notion of due process is simply from observing things. I think you will have to go to somebody more competent for that.

Mr. **Fazio.** Mr. Gillmor?

Mr. **Gillmor.** Yes, thank you, Mr. Chairman.

I thought you made a number of good points, Mr. Frenzel, that will be very helpful to the committee.

Mr. **Frenzel.** Thank you. You are the first.

Mr. **Gillmor.** There was one point that you did not touch on and I just wanted your thoughts on this. There have been some recommendations regarding Members serving on boards outside the legislature, either boards of companies or boards of charitable institutions. I have always felt in a kind of a rule of comparability that what somebody does in public life should have comparable rules to someone in a similar position in private life.

For example, a business executive would not be considered to be disloyal to his employer or dishonest by serving on another board, either profit-making or charitable. Since that is one of the things being kicked around, I was wondering what your thoughts are as to the evils, lack of evils, or whether or not we should get into that area at all.

Mr. **Frenzel.** I think that is a good thing for this committee to work on. All of us handle it a little differently. Some of us do and some of us don't.

I have told all of those charitable boards that I would serve on an advisory committee but not on the management board, trying to insulate myself from problems. Now, if you happen to be the chairman of the subcommittee that finances the arts, it is probably not good form for you to be on boards of consumers of some of that money that gets spent.

I hope that you could develop a rule of reason that would allow Members to take part in community activities without feeling guilty about it. Again, I think disclosure is better than rules of prohibition.

Mr. **Gillmor.** Thank you, Mr. Chairman.

Mr. **Fazio.** Mr. Obey.

Mr. **Obey.** Mr. Frenzel, let me simply say that I think there is a lot that you say that is very useful—certainly your discussion about the compression of dollar amounts from the low end of the disclosure scale. If nothing else, 12 years of inflation has certainly meant that those numbers are probably out of whack and ought to be adjusted.

I would also very much agree with your comments about the tendency of people to try to turn those disclosure forms into net worth statements. They were never meant to be that. In fact, we explicitly indicated that they were not meant to be that.

I have been one of those, unfortunately, who wind up always on the bottom end of the scale when my delegation's holding are released. Sometimes that causes considerable chuckles in some circles back home.

I think the purpose of those forms is meant to make public any likely conflict, not to try to determine what someone is worth. I hope we can stick to that rule.

Mr. **Frenzel**. Thank you. You have got the thrust of my testimony. That was my intention, to reveal the problem areas, not the trivia.

Mr. **Obey**. I have another question. At the time that we put together the rules in 1977, you had some very thoughtful concerns about spousal disclosure.

I have the committee transcript here and you say:

> Somewhere it has been alleged that women's groups have been contacted and do not object to the filing of spousal income. If so, I would like to have names of the groups and the people who have not objected. In my judgment, it still imposes a second-class citizenship on a spouse which the spouse did not agree to because the spouse did not file for Congress or accept the Federal job.

As you know, we had considerable concern on that issue at that point. I would like to ask you: how do you feel about that issue today, the issue of spousal disclosure?

Mr. **Frenzel**. I feel as you do, that I was a prophet and that in forcing spouses to reveal, except in all but very extreme cases where the spouse does not know or control the assets of another spouse, I think that we have conferred second-class status upon spouses of Members of Congress. I think it is silly for Members to have to report for their spouses.

I lost that battle in your commission and in Rich Preyer's committee. But I think that eventually, if people really recognize the rights of everyone, there will be a realization that a spouse has an independent life and should be protected.

The reason for reporting the spouses earnings and assets was that theoretically there was an ability to move assets between the husband and wife and somehow that was going to prevent the disclosure of otherwise corrupting evidence. I don't know if there has been any showing of that, but I do think there is a stronger right to privacy and a normal citizen's rights on the part of any spouse. I think that the simple proper decision is simply to say that Members of Congress must report for themselves but not for their spouses.

Mr. **Obey**. Do you think we could pass that rule today?

Mr. **Frenzel**. I don't have any idea. I would be glad to join with you in making a herculean effort along those lines.

Mr. **Fazio**. Mr. Livingston.

Mr. **Livingston**. Thank you, Mr. Chairman, and thank you, Bill, for being so thoughtful as always.

I thought you understood when you started talking about the standards of official conduct procedure that you were aiming toward a system such as that described by the chairman in his question. Then you talked about the need to involve the subject of the investigation in the grand jury process.

Grand jury process, traditionally, is an investigative process. Of course, he would be invited to attend and to testify, but it would be very difficult to involve him in the investigation.

I was wondering if perhaps you might clarify that?

Mr. **Frenzel**. I do agree with you, Bob, that it would be difficult. You have simply proved an earlier statement of mine, that I am not competent to advise you in this area other than to point out that there is a problem.

I don't know whether you shift it to another committee or at what stage you would draw some distinction for the people who report on our activity so that it is either understood to be simply a reason to believe that a violation has occurred, rather than a conviction, when the first part of the process reports.

I don't know how to draw that line. You do better than I on that.

Mr. **Livingston**. It is always a difficult process. I know Mr. Edwards has a bill in which he proposes to create a bifurcated process where you have investigation and then trial.

Mr. **Frenzel**. I would just rather have the trial before we hang the guy, and I do believe that both Mr. Tower and Mr. Wright were hung prematurely.

Mr. **Livingston**. Thank you, Mr. Chairman.

Mr. **Fazio**. Mr. Stokes.

Mr. **Stokes**. Thank you, Mr. Chairman.

I would join with our colleagues, Mr. Frenzel, in expressing our appreciation to you for highlighting several areas that this task force should be looking at in terms of whether or not we make specific changes. Like Dave Obey, I very much appreciate your pointing up the actual utilization of the financial disclosure form.

The total purpose of it has been subverted through the media. In Ohio, all of the media contact our offices. They don't go to the Ethics Committee to try to look at the forms. They want us to supply them copies of the form before we even file them with the Ethics Committee.

Then once they get it, it is utilized in Ohio for the purpose of showing that John Glenn and Howard Metzenbaum are millionaires and that Lou Stokes and Mary Rose Oakar are poor. I have never seen an article written in which they point up any conflict of interest as it relates to any of the assets of any of the members of our delegation. They zero in on who is the wealthiest and who is the poorest.

Let me ask this question: obviously, this task force has to make some very important decisions in terms of what changes we should recommend. I am hearing something like the old adage, "If it ain't broke, don't fix it."

Would you agree that we need to just zero in on certain specific areas, establish priorities in those areas, and sort of make our work center around that?

Mr. **Frenzel**. Yes, I do. I think that basically you have set up the agenda which the chairman outlined and that you have sent a little quiz around to the Members. I think that we might agree that those broad categories are areas where we are going to work.

The history of Rich's committee and Dave's is that you do not get everything you recommend anyway. There is no point in threshing out a book for the Congress to vote on. I really think you should be focused.

Again, I want to get back to that disclosure business. I do note that those who are most anxious to report on our assets and earnings, are not willing to report on their own.

Mr. STOKES. Good point.

Mr. FRENZEL. I really think that our reporting should be quite different and less detailed than it is now. When those reports are filed, Mrs. Frenzel always says, "If you're so rich, how come I don't get any of it?" I really don't feel as rich as I seem to be reported occasionally.

Mr. FAZIO. That's a different form of spousal disclosure. [Laughter.]

Thank you, Lou. I think we have used up more than Bill's 10 minutes and I know that Charlie Bennett also has another place to be.

We do thank you for your tour de force presentation. We appreciate it very much.

Charlie, come on up.

STATEMENT OF HON. CHARLES E. BENNETT, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA

Mr. BENNETT. If I stand up, I will be briefer. I have to preside over another meeting at 10:00 o'clock and have to be at the White House at 10:30. The one at 10:00 o'clock is my bill coming up, so you can see that I am under a little pressure this morning.

I will submit a statement to you.

Mr. FAZIO. Without objection, it is part of the record.

Mr. BENNETT. The reason I am here today is because I understood it would be appropriate to make a suggestion about things that I thought needed to be done. The thing that I think needs to be done, which is solely addressed in that paper, is a thing that probably grew out of something very innocent but is no longer innocent.

That is the heavy distribution now of millions of dollars by PACs and other personal funds of Members of Congress to people in the caucus who are going to be voting for them for either chairmanships or leadership positions in Congress. This is a scandal about ready to break.

I remained silent on this matter for a long time but finally, when I read in the paper that they were actually having fund-raisers to raise money, hundreds of thousands of dollars, to distribute to the people in the caucus who would be voting on them for various positions, I thought it was necessary for me to do something about it.

My bill that I have introduced provides that you can not do that. It does not keep you from contributing to the campaign coffers of your party or the Congressional group that raises money for Members of Congress, but it does prohibit this one-on-one distribution of funds.

There are various moral things that are wrong with it. If this was done outside, you would be in jail. In other words, if you paid somebody to vote for you, you would go to jail for doing it.

Years ago, Senator Holland and I put through a simple Constitutional Amendment just to say that you could not require poll taxes. The poll tax was a device used in the deep South for prohibiting people from voting and for encouraging the walking-around money for others. It was a very corrupt situation and the thing was abolished by Constitutional Amendment.

What is happening here in Congress is really scandalous. Nobody has said anything about it, but it is a scandalous situation, where a big industry with an ax to grind before a committee in Congress, a few with great personal interests involving millions or maybe billions of dollars, contribute to a PAC fund which results in somebody being elected chairman of the committee. That allows outside interest by money to control who is going to be chairman of the committee. That is a pretty awful situation and it ought to end.

Mr. FAZIO. Charlie, I am not sure whether that and the grandfather clause that Bill Frenzel mentioned fall under this committee's jurisdiction or under Al Swift's task force that is working on campaign reform. But either way, I think those questions will be addressed one way or the other.

They are certainly relevant to where the institution stands in at least its own self-esteem, whether the public level of interest has risen to put pressure on this one or not. It certainly may have on the grandfather clause issue.

Do you want to take some questions? I know you don't have much time.

Mr. BENNETT. I am very short on time, Mr. Chairman.

Mr. FAZIO. Mr. Sundquist?

Mr. SUNDQUIST. Thank you, Mr. Chairman. I don't have a question.

I would like to say, Charlie, that I agree with you. I think it needs to be addressed. I think it is a separate question from PAC contributions, but the linkage is there between the outside interests influencing who goes into leadership.

Mr. BENNETT. It is not theoretical; it's actual.

Mr. SUNDQUIST. I agree with you.

Mr. FAZIO. Mr. Frost?

Mr. FROST. Charlie, what about the situation where there is an open seat? There is no incumbent and both parties are mounting serious efforts. We have had several special elections just recently. Both parties are mounting serious efforts to elect their particular candidate for the open seats.

Mr. BENNETT. I would encourage giving money to the committee, but not one on one.

Mr. FROST. You would be broad enough to prohibit a member from trying to help someone even run for an open seat, regardless of what the motivation could be on the part of the member?

Mr. BENNETT. If you are yourself a candidate in the caucus——

Mr. FROST. No, there are a lot of people who are not candidates, Charlie.

Mr. BENNETT. That's what my law says. You have to be a candidate.

Mr. Frost. So you would not reach the situation where, say there were a special election in my State of Texas and I wanted to help the Democratic candidate—I am not running for anything here in the caucus—but I wanted to try and help my party's candidate.

Mr. Bennett. The bill I introduced does not prohibit that.

Mr. Frost. Okay, I just wanted to nail that down.

Mr. Bennett. It does not say that you can not give money to the Congressional committee either. You can give one on one if you are not running for office.

Mr. Frost. I still would be able to give out of my own principal campaign committee.

Mr. Bennett. What you are trying to get rid of is buying votes. They are now being bought, and they are being bought by outside interests, not by inside interests.

Mr. Frost. I know you have to go, but how do you reach the question of—and I particularize it to myself because I am not a candidate for any leadership positions. I might be a candidate for a leadership position five years from now.

Mr. Bennett. That would not be affected.

Mr. Frost. Okay, thank you.

Mr. Fazio. I see a distinction between those PACs that were created by individuals aside from their campaign funds to make contributions to their colleagues, and most of those are either created by leaders or aspirants to be leaders and those of us who make direct contributions out of our money, which are limited to $1,000 versus the ability to give $5,000 times two out of those other PACs.

Mr. Bennett. I am not sure that I am entirely following you, but I want to say that only in the past five or ten years has this situation grown into something very sinister. It should be stopped. I am not sure what you are saying——

Mr. Fazio. I know your bill covered both your individual campaign fund and a PAC which was created by the individual which had broader purposes that would allow giving larger sums of money.

Mr. Bennett. I include both.

Mr. Fazio. I know you do. I think that the limitation on an individual giving $1,000 to a neighbor——

Mr. Bennett. If you did it outside, you would be in jail.

Mr. Fazio. Maybe.

Mr. Bennett. Yes, you would. If you gave money to somebody and you were running for office, you would be in jail unless you could show that you innocently did it. That would be very hard to do.

Mr. Fazio. I think Martin's point is that sometimes when you give somebody $1,000, you are not attempting to curry favor for purposes of having that person voting for you for something. You are trying to in effect get some money to a candidate under very tight time frames just as the other guys are doing.

Mr. Livingston. Mr. Chairman, as Mr. Bennett prepares to leave I want to say first of all that I agree with him. I think he has highlighted an abuse in this Congress that is going to have to be addressed. I realize that it is going to be very difficult for us to make distinctions between the innocent situation and the one that is subject to abuse, but I think that we have to address it sooner or later.

Secondly, I want to say that I had the honor of serving under Mr. Bennett when he was Chairman of the Ethics Committee during a very difficult time for the American Congress, during the Abscam years. He was an outstanding chairman and a credit to the institution.

I just want to extend my appreciation, Mr. Bennett for the service you rendered this Congress during those difficult years.

Mr. **BENNETT**. Thank you.

Mr. **FAZIO**. Charlie, I think Bob speaks for all of us in terms of our appreciation for what you have been doing in this area during your entire career. I hope that, even though you do not have time to sit and talk with us this morning, you may well be in a position to give us your thoughts as we go along on a whole range of issues other than the one that is your focus this morning. I hope that you will be willing to impart your thoughts to this committee.

Mr. **BENNETT**. Any time you want me to come, I will come. I just have to go this morning. It's my bill.

Mr. **FAZIO**. Thank you very much.

[The prepared statement of Mr. Bennett is in the Additional Statements Submitted for the Record.]

Mr. **FAZIO**. Why don't you come up, Lee and Don? I know you probably both have other places to be, too.

Don, why don't we start with you?

STATEMENT OF HON. DON EDWARDS, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. **EDWARDS**. Thank you, Mr. Chairman. I will be brief.

In 1979, the Democratic Caucus decided to pass a resolution authorizing a commission to study the ethics procedures, chiefly. After all, when we talk about due process, that is what the Bill of Rights is really all about. If you have due process, you have all kinds of protection in our country.

There was some dissatisfaction with an alleged lack of due process in the Standards Committee at that time. The task force consisted of Charlie Rose, Dan Glickman, Pat Schroeder, Elizabeth Holtzman and Wyche Fowler. We had as counsel Professor Dan Pollard of North Carolina Law School who is a very fine scholar.

We held a series of hearings and heard testimony from Members, of course. Lee Hamilton was one of the very extraordinarily talented witnesses. And we had lawyers who had represented Members in ethics investigations before the Standards Committee.

We issued a 12-page report that I would be glad to submit for the record, Mr. Chairman, that was voted unanimously by this committee. We wrote a bill that I explained one day to the caucus and referred to the Rules Committee, where it quickly died. Nothing happened.

I think we probably felt most strongly about recommendation number one. We had four recommendations with regard to the procedure of the Ethics Committee.

The first was that the Ethics Committee should be divided into two subcommittees: an investigative subcommittee and an adjudicatory subcommittee, one to investigate and prosecute, and then the second one to hear the evidence after the investigative subcommittee had finished its work and to be the judge and jury. That was voted on unanimously.

I might say, Mr. Chairman, that the lawyers who had represented a number of our colleagues felt very strongly about that. They just felt that being there, trying to protect a client in a process and having Members, maybe one or two there a lot of the time with others in and out, with the combination of a grand jury, prosecutor, investigator, judge and jury all in one, was a system which did not work at all.

So we voted that unanimously. We also voted unanimously that there ought to be a quorum during the hearings stage by the investigative subcommittee, but that at the trial before the second subcommittee, the judge and jury subcommittee, all the Members ought to be present.

The third recommendation was a statute of limitations to be the same as a Federal felony, which was five years. That has always made a lot of sense to me. The reason for a five-year statute of limitations for a Federal felony is that after five years or even before that, the evidence gets weak, people forget, there is a lack of due process where you go back years and years to some old grudges or something like that.

Those were all passed unanimously. The only dissenting vote was on the question of whether the Member who is before the full House of Representatives should be able to have his lawyer there. If the charges are very serious, there might be difficulty in getting a volunteer from your colleagues who is experienced enough to handle it properly.

I don't quite recall whether we said that the lawyer ought to be able to speak at the House meeting. That is really about it, Mr. Chairman.

Mr. FAZIO. Don, I wonder if you could tell us what level of consideration these proposals got? How far did they get in the legislative process? Did anybody take them seriously, or has it required the Congress to have more familiarity with this process in recent years for these ideas to perhaps have more credence?

Mr. EDWARDS. I believe that the resolution was passed establishing our task force under some sort of pressure, but I don't quite recall what the pressure was. I know that we were worried about a few things that were happening at that time and the issue cooled by the time we finished our work and issued the report, took it to the Rules Committee, and took it to the caucus.

People were not concerned anymore. These issues have a way of having a high time and a low time, and we brought it out at the low time.

Mr. FROST. Would the gentleman yield?

Mr. FAZIO. Happy to yield, Martin.

Mr. FROST. Actually, my recollection is that your recommendations were brought to the caucus committee that I chaired, the Committee on Organization, Study and Review. They were considered by my committee and my committee did not recommend them at that time.

I will tell you that they now appear to me much more attractive than they did when I first heard about them in 1981 and 1982. I think that the recommendations that you have offered have a lot to say.

Mr. **Fazio**. Don Wolfensberger, who is helping to staff this committee, is associated with the Rules Committee and has been for awhile. He indicated in a report he made to us that the committee thought that a bifurcated system would only lead to more delays and possible legal challenges. In other words, we were more interested in efficiency apparently, than in due process at that time. Is that your recollection?

Mr. **Edwards**. No, I don't recollect that, but I would not take that criticism very seriously. It seems to me that the lawyers have a hard time suing Congress, suing the House of Representatives, because we have a Constitutional privilege of taking care of ethical matters.

Mr. **Fazio**. Mr. Gillmor, do you have any questions?

Mr. **Gillmor**. No questions, Mr. Chairman.

Mr. **Fazio**. Mr. Stokes?

Mr. **Stokes**. No questions, Mr. Chairman.

Mr. **Fazio**. Mr. Livingston?

Mr. **Livingston**. Two questions, Mr. Chairman.

First, on the statute of limitations—the five years is the traditional criminal statute of limitations, but we deal in terms, 2-year terms. Would you have any objection to saying that we would put in a statute of limitations of possibly three full terms?

Mr. **Edwards**. No, I think that would be very logical. I think the five-year statute would get us into some difficulty in the middle of a term.

Mr. **Livingston**. Secondly, you say that the Member would have the right to have his attorney present on the House Floor. Would his attorney have the right to speak for him?

Mr. **Edwards**. I would have to give that more thought. I can not quite recall what the report said.

We really do not like to have people speak in the House of Representative who are not Members, although we have from time to time. Whether or not we are denying due process by having some poor guy who really is completely out of his or her depth—I can see that side of it, too. Maybe we ought to leave it up to a vote of the House at that time before the decision is made. I can talk on both sides of that.

Mr. **Stokes**. Will the gentleman yield on that point?

Mr. **Livingston**. Yes.

Mr. **Stokes**. We do permit Counsel for the Ethics Committee on the Floor. It would certainly seem that in all fairness, a Member charged with a violation ought to also be able to have his counsel on the Floor.

Mr. **Edwards**. But he is not allowed to now.

Mr. **Stokes**. Right.

Mr. **Fazio**. Don, let me ask you: we have had several trials, so to speak, in the penalty phase on the Floor during the experience that I have had. Uniformly, they have not been particularly edifying in terms of really getting across the essence of why we are there.

You have people who perhaps are rallying around their friends and other people who have the noose and want to hang somebody.

You do not really have a proper decorous discussion of the merits of the case.

Did you consider that and do you have any suggestions about how we might improve on this process? I think typically we have had an hour for debate, half-hour on each side. It does not really give you time to get into the details of some of the issues that are before us. Any thoughts on that?

Mr. **Edwards**. Yes. The opportunity for a stout defense ought to be provided, such as the Senate provides in an impeachment trial. That is a really adversarial situation over there, and I think that we could look at what they do and maybe provide that kind of protection for the colleague who so desires it. Sometimes the colleague just wants to go out and make a plea and let it go at that.

Mr. **Fazio**. Any other questions?

Mr. Frost?

Mr. **Frost**. The thing that I am most attracted to now is the bifurcation question. Do you necessarily have to have two standing subcommittees, or could you have the Ethics Committee as it currently exists do the first stage and then have a jury, so to speak, selected randomly from the House do the actual trial stage, rather than having two standing subcommittees where one subcommittee only functions as the grand jury and the other subcommittee only functions as the actual jury? Those proceedings could be very lengthy and you might have a more realistic situation to draw Members at random if you ever go to the trial stage.

Mr. **Edwards**. I would think that is the best idea, to draw by lot. Then there can not be any complaints about fairness—only with 50 percent Republicans and 50 percent Democrats.

Mr. **Fazio**. I would like to welcome my Co-Chair, Lynn Martin. It is nice to have you with us this morning.

Are there any more questions for Mr. Edwards?

[No response.]

Mr. **Fazio**. Don, we thank you.

Mr. Hamilton?

STATEMENT OF HON. LEE H. HAMILTON, A U.S. REPRESENTATIVE FROM THE STATE OF INDIANA

Mr. **Hamilton**. Thank you, Mr. Chairman, for the opportunity to make a few comments. I believe as I guess all of us do that we ought to have a procedure by which Members judge the conduct or misconduct of other Members. That is what you are struggling with and I appreciate the efforts that you are making and I want to try to be constructive and helpful.

Let me just make a few quick observations. My first suggestion is that I think we need to simplify the House Code of Official Conduct to make it clear what is at the heart of it. I think House enforcement of the ethics rules has gotten off track in recent years and we have become bogged down in legalese, with very technical discussions of narrow provisions in the rules and in advisory opinions.

Instead, I think our major focus ought to be on broad standards of good conduct—whether or not a particular action reflects credit or discredit on this House, as Rule One of the Official Code says.

If you look, for example, at the 69 charges that are now in the statement of alleged violations against the Speaker, none of them really go to the basic Rule Number One question of whether or not his actions reflect credit or discredit on the House. If you look at the Mario Biaggi case recently, one of the charges was involved with his use of a telephone to arrange trips to assist a company.

That is the kind of discussion you get into in a criminal law case, and it just seems to me that phone use does not really indicate violation of basic House ethics rules and precepts. It suggests to us how far we have strayed from the original concept here, which is that a Member ought to act in such a way that he or she reflects credit upon this institution. That is what our focus ought to be in hearings.

I guess that I favor a code that makes clear that a few broad ethical precepts are at the heart of the code. I understand that you will have to list specific rules and all the rest. Those rules ought not to be exhaustive but illustrative. The membership has to be impressed that our responsibility as Members is to conform to these broad standards of good conduct.

The second point I want to make is that I think we have become increasingly concerned with a fairly narrow conception of ethical conduct or public morality. Basically, our focus is on financial matters.

Clearly they are important, but if you look at this code here, the 250 pages of the Ethics Manual, you get the impression that if you file your financial disclosure form on time, that if you do not convert campaign funds to personal use, that if you do not misuse the frank, then you are behaving in an ethically acceptable and moral way as a Member of Congress.

It seems to me that rules of that kind only capture a part of our responsibility as Members of this institution. We have to understand that you undermine the ethical integrity of this Congress if you greatly distort your opponent's record, if you use deceptive political advertising, if you mislead your constituents with regard to your involvement in getting legislation passed or a case resolved or a project launched, or if you are talking about the dirty world of politics that the rest of the people in Washington engage in.

Members have to recognize that many seemingly small routine acts can undermine the basic perception of Americans in the integrity of their government just as much as the front page scandals do. The second point I make then is that we have to try to broaden our concept of public morality and what the standards are for a Member of this institution.

The third point I want to make, and I really do not mean to put this in the present context at all, but rather to commend our leadership, is that I think clear ethics signals really do have to come from the top. President Bush, Speaker Wright, Minority Leader Michel—all indicated their interest in Congressional ethics at the beginning of this session, and in ethics in the public sector.

The point here is that the leadership of government in the Executive, Judicial, and Legislative Branches must make very clear that they set the right tone overall. The tone that is set by our leadership is probably more important than any particular rule that we might have.

The fourth point I want to make is that I think the Ethics Committee has to expand its efforts to try to head off possible cases of misconduct before they occur. I guess this comes under the rubric of preventive action.

That means the committee has to expand its outreach program and to expand its effort as an advisory committee. I do not know exactly how you do that, but I think that all of us need to be visited from time to time by staff members of this committee and reminded just what the rules are.

There have to be other ways of encouraging Members to think more carefully about these rules of conduct. I do not think that most of us think very carefully about them ahead of time, and we can easily slip into practices, because of the complexity of our jobs, that bump up against these rules really without knowing that we are doing it. So there needs to be a much greater preventive action by the committee.

Another suggestion is with regard to the committee Members themselves. I am very concerned with the way we treat Members of the Standards Committee.

It is tough to get Members to serve on this committee, and once they are on it, we tend to pillory them. A very frequent defense of a Member of Congress who is charged with a statement of allegations is to charge the committee with racism or incompetence or political motivation. Often a Member will defend himself by attacking the committee or the process which he or she has approved.

After all, we have all voted on this. We have all approved it. We do that every time the Congress begins its session. Then to turn around and attack the very process which we have approved seems to me to not be a wise thing to do.

I support the basic idea of having a Member's misconduct judged by other Members. There are a lot of people who suggest that we ought to turn it over to somebody else, to a panel of judges, former Members, something of that sort. I do not think we ought to do that. I do believe it is important that we try to improve our treatment of committee members though.

My final point is simply this: I do not think you are going to get very far on ethics in this institution unless we make very sure that it is a bipartisan effort. Quite frankly, we have to search for ways to broaden bipartisan cooperation in ethics.

There is no doubt in my mind that much of the recent interest in ethics reform has been a very thinly veiled desire to use the ethics issue for partisan advantage. It may give you partisan advantage at any particular point, but in the end, that really undermines the ethics process in this institution and undercuts it.

We must do everything we possibly can to not use ethics as a tool for badgering our political opponents. The cynical and partisan way that we are bringing about ethical reform may in itself be bringing down the public's perception of integrity in government. I think to be truly effective, government ethics has to be approached in as nonpartisan a way as we possibly can.

Those are some miscellaneous thoughts, Mr. Chairman, on your exceedingly difficult task. I certainly wish you all the best. Thank you.

Mr. **Fazio**. Lee, I thank you very much for your comments. I think they are good watchwords for this committee as it addresses these difficult issues.

I think you can see that we are here in a totally bipartisan approach, not because of anyone on this committee demanding it, but because our leaders, Speaker Wright and Minority Leader Michel, concluded that unlike some of the other efforts, including the Obey Commission, this ought to be organized in a way that was totally bipartisan with equal participation. I think we all understand that if we are to get anything done, it is going to be through that kind of approach. The Floor is not going to be any more accepting of recommendations of this task force than any other, but I hope that when we do report whatever recommendations we can agree on, we will have at least cleared the hurdle of antipathy and bad blood that sometimes accompanied some of the prior ethical reform efforts.

I am very pleased that we have people on the task force who have been participants in the past joining some newer Members. I think this approach is the only possible way we could have taken and I am pleased to see that our leadership understood that.

Lynn, do you have any comments or questions?

Mrs. **Martin**. No, I just want to thank the Congressman from Indiana.

Mr. **Fazio**. Mr. Stokes?

Mr. **Stokes**. No questions, Mr. Chairman.

Mr. **Fazio**. Mr. Gillmor?

Mr. **Gillmor**. Just one, Mr. Chairman.

There are a number of things you said that I agree with, but there was one that I definitely agree with, although I am not sure how we can effectuate it. That was one relative to campaigning.

It is that negative dirty type of campaigning which those who are using it say just points out the opponent's record. I agree with everything you said there, but at some point, the committee will have to put the rules in words, and I find it difficult to know where we go to get an enforceable standard in that respect. Do you have any thoughts on that?

Mr. **Hamilton**. I am not sure that I do. Obviously, it is not easy to do. I guess my principal thought there was that we tend to look at ethics in terms of financial matters and ethics really do involve a lot more than that.

Our code ought to reflect that. It might not be out of the realm of the responsibility of the Ethics Committee to call before it certain Members who are engaging in certain kinds of campaign tactics that do not reflect creditably upon the House of Representatives.

That is the point. Our responsibility as Members of this institution is not to abide by 250 pages of specific rules that none of us can remember or recall. Our responsibilities are to act in such a way that we reflect credit on this institution.

Now that is a broad standard and people are going to disagree from time to time as to whether specific conduct does or does not reflect credit on the institution. Any ethical judgments are tough judgments.

I would like to see an Ethics Committee engaged in those things. If I get up and tell my constituents that Lee Hamilton stopped this particular piece of legislation from going through or that Lee Hamilton did it, when in fact I had very little to do with, only signing my name as a co-sponsor with 250 other people, then I think I am distorting the truth and not reflecting credit on the institution of the Congress.

I would like to see the Ethics Committee involved in those kinds of questions, not just whether or not my financial disclosure statement is absolutely correct. The point is to broaden our view of what constitutes ethical conduct in this body.

Mr. FAZIO. Let me just jump in on this point. We have another problem that is of a similar type of political involvement. That is, that increasingly campaign managers have put on their list of things to do, to file a charge against your opponent before the Ethics Committee, preferably late so that it can not be resolved before the election, in order to leave a cloud hanging over the head of the candidate they are running against.

The committee is being abused for political purposes, and while I do not want to make it impossible to bring work before the committee that is appropriate, we have got to find a better way to screen out these patently political abuses that begin to clog our doorways around October of an election year. Do you have any comments on that?

Mr. HAMILTON. Sure I do. I think the committee has to be so well organized and so well put together that when somebody brings, as you said, a patently fraudulent kind of a claim, that the committee considers it and says so, immediately.

Mr. FAZIO. It is often difficult to find the time to do it given all the other work we have.

Mr. HAMILTON. I understand that, especially right at election time. But in my judgment, that is a committee responsibility.

Mr. FAZIO. Mr. Frost?

Mr. FROST. Lee, I do not want to in any way dwell on the current investigation that is going on. You did make reference to it, and I want to ask you one thing about that investigation, particularly in light of your comment that we need to be more specific in terms of the way the rules are drawn, that they need to be clearer—

Mr. HAMILTON. But broader.

Mr. FROST [continuing]. Clearer and broader. Those are not necessarily easy to reconcile but they can be reconciled.

There is one thing in the current investigation that I have noticed that concerns me. That is the definition of a person with an interest in legislation. That is something that this task force will be dealing with at a later point.

In the report that the committee put out, they adopted a definition of a person with an interest in legislation that troubles me. I want to quote briefly from that and see if you think that this is something that we can deal with in the rules to be more specific.

Basically they have adopted a rich man's standard that any wealthy person is a person with an interest in legislation. They specifically said, "It is readily apparent that Mr. Mallick was an individual who for a long period of time clearly occupied a position distinct from the public at large by virtue of his extensive real estate and oil and gas investments. As such, it is reasonable to infer that Mr. Mallick, much more than the general public, could be deemed an individual who would take a great interest in the development and implementation of Federal legislation affecting the real estate development industry and oil and gas investments, including for example, the tax consequences arising therefrom. In this regard it is sufficient to simply observe that during the period of time of his real estate and other investments, major legislation was passed that affected, either directly or indirectly, Mr. Mallick's business activities."

That troubles me in the sense that it sets up a standard that any wealthy constituent is by definition a person with an interest in legislation, regardless or whether he has ever called upon us to do anything. My question is: is that something that we can and should narrow? Is that an area that we should try to tie down and be very specific on, or is it possible to do that?

Mr. HAMILTON. I think my answer to that question is, yes. I think the question of direct interest—I have not tried to define it—probably does need clarification. There is ambiguity there.

I would agree with that. I do not have any language to suggest to you at this time, but it is a very critical question obviously, and one that does have to be more sharply defined than it is.

Mr. FAZIO. I think that is clearly one of the tasks for this group of people to be working on, a better definition of that.

Mr. HAMILTON. The risk here is that you get too legalistic, I think. I am a lawyer and many of you are lawyers, and many of us in this institution tend to think as lawyers.

I think the business of an ethics panel can fall into a real trap if you get too legalistic in your approaches to these things. We are not conducting a criminal trial in these instances, although there are clearly analogies, due process, and all the rest, but it is not strictly comparable to a legal proceeding.

Mr. FAZIO. I do not intend to get into any debate with Mr. Frost on this issue. I just want to point out that the committee's report encompassed more than simply that point that was made in reference to Mr. Mallick.

Mr. FROST. I understand that. It was language in the report that I found troubling, Mr. Chairman.

Mr. FAZIO. I understand that very well, having wrestled with it myself.

Mr. Livingston, any questions?

Mr. LIVINGSTON. Briefly, Mr. Chairman.

The standard of broader but clearer, obviously, is going to be difficult to meet. That is a great task for us, but I certainly agree with your objectives.

I am a little bit concerned about your descriptions of the instances, the examples that you gave, in having this committee be a little too meticulous. There is a concept in criminal law called System and Intent.

Basically, if you prove a single minutiae in and of itself and you can not determine the intent of the individual, he is going to go free because it might be a violation of the law but you did not know his intent. So what you do is prove a common pattern of similar activities which individually might not prove anything at all, but together prove a common scheme to violate the law or the rules or what have you.

I take it by the examples you have given us that you would not prevent this committee from putting together patterns to show the intent?

Mr. HAMILTON. No, I would not. I guess what I am really arguing for is focus, what your focus ought to be when you are on the Ethics Committee and when you are a member voting on the Floor of the House. Your focus ought to be on the broad concept of the rules. That concept is that you act in such a way that you reflect credit on the House of Representatives.

It is very easy to get into a pattern of analyzing these specific rules and saying, "The violation was or was not committed pursuant to a definition of these words or that word." Now, you can not avoid that kind of discussion completely. I understand that and I am not saying it is irrelevant. That kind of discussion could be important.

I do not criticize that, but the focus ought not to be that narrow. The focus has to be, "Is this person conducting himself in such a way that he reflects credit and honor on the institution of the House of Representatives?" That is the focus.

Mr. FAZIO. Mr. Sundquist?

Mr. SUNDQUIST. Thank you, Mr. Chairman.

Thank you, Lee, for your excellent testimony. I really agree in the area of your comments when you talk about preventive action and I would also suggest that perhaps our administrative assistants should receive special attention in terms of being briefed on these ethics rules. They are in a position to perhaps have some influence.

Mr. HAMILTON. Good point.

Mr. SUNDQUIST. My question is this: you talked about how we treat Members of the committee—do we have a problem under the present rules with people trying to influence Members of the committee from within the Congress? Is that a potential problem we should deal with?

Mr. HAMILTON. I must say that I have not sensed that it is a special problem. I mean if you are the person that is charged, you have every right to try to influence those Members.

Mr. SUNDQUIST. I was thinking of Members who were not charged. What brings this to mind is that we had a problem recently with outside influence on Members. I do not know how we deal with it except to censure or something like that. There clearly was a problem with that. My question is: should we deal with that and should we make sure that the Members of this committee are free of influence pressures from others?

Mr. HAMILTON. I served on the Intelligence Committee. You handle certain kinds of information in the Intelligence Committee, and there is a kind of broad understanding in the House that you do not go up to a Member of the Intelligence Committee and start asking him a lot of questions about a particular covert action. As Mr. Stokes knows, if you are on the committee you are restricted in talking to other Members about classified information.

I make an analogy that when the Ethics Committee is meeting to consider a charge against Congressman X, then I think our practice as Members should be to not ask them any questions about it.

Their practice should be to not discuss it. If I ask a question of a member of that committee, then I think I am out of line.

I have been on the Ethics Committee and I have tried personally not to ever ask questions of the Ethics Committee, although heavens knows, I am curious about it. I want to know about it, but I do not think it is proper.

Maybe we need to make that a little more explicit. Maybe we should make it known in this body that to pry a Member of the Ethics Committee about what is going on in that committee is really inappropriate conduct for a Member of Congress.

We ought to try to do what you are suggesting. That is to really insulate them, if you would, from these outside pressures. I think peer pressure alone would be sufficient. I think it works reasonably well in the intelligence setting and maybe if we make it clear enough, it will also work in the ethics setting.

Mr. SUNDQUIST. Thank you, Mr. Chairman.

Mr. FAZIO. Thank you.

We have another new Member just joining us, Sid Morrison.

Do you have any questions, Mr. Morrison.

Mr. MORRISON. First of all, I am flattered to be a part of this group. I will be working my way into your deliberations. At this point I have no questions for my good friend, Lee Hamilton.

Mr. FAZIO. Thank you Sid, and thank you, Lee for wrapping up this panel of current Members.

Now if we could have our former colleagues, Messrs. Whalen, Buchanan, Anderson and Pike come up and join us as a panel.

My Democratic colleagues tell me that Otis Pike can hold his own with three Republicans so we have not tried to isolate you, Otis. We just wanted to make sure that our total representation today was in pure bipartisan balance.

Mr. PIKE. I frankly suggested that I not come up with them because I did not wish to contaminate them with my views. [Laughter.]

Mr. FAZIO. Why don't we start in alphabetical order for want of a better approach.

John Anderson, would you lead off?

STATEMENT OF JOHN B. ANDERSON, A FORMER U.S. REPRESENTATIVE FROM THE STATE OF ILLINOIS

Mr. ANDERSON. Thank you very much, distinguished Co-Chairs and Members of the Commission.

I think it was Ogden Nash who said that when you are over sixty, you tend toward prolixity or something like that, so to curb my naturally discursive tendencies I have written out a few remarks. They are not in acceptable form to give to the reporter for the committee, but if you think they are sufficiently valuable when I have finished, I would be glad to put them in proper form and submit them for the record.

As I view the current wave of concern over Congressional ethics from the vantage point of someone who for eight years now has been removed from active participation in the political process, I think it is more than just an episodic recurrence of concern. If I am correct in that belief, it would be quite obviously unwise to simply wave the problem aside, to assume that public concerns will simply fade away, or to take refuge in the old saying that this too shall pass.

I suppose I would not ordinarily revisit this subject on my own testimony a dozen years ago before the Obey Administrative Commission and particularly the subcommittee that was chaired at that time by the preceding witness, Lee Hamilton. But I did read that testimony last night in preparation for the hearing today and it did remind me that despite what I have just said, this is a matter that Congress has had occasion to revisit at least once in the decade ever since the end of World War II.

I am disturbed by the fact that some of the expressions of contempt for Congress today, I believe, are not only egregiously unfair—and I am thinking of the kind of piece that appeared a couple of weeks ago in one of the national news magazines which was a cover story talking about the new culture here on Capital Hill. A lot of that commentary, it seems to me, is more inflammatory than insightful.

I would remind this commission—perhaps I don't have to remind them—that about the same time that article appeared, there was an article in one of the business publications that was lamenting the fact that from the canyons of Wall Street to the furthest reaches of the business community, there is this wave of speculation. I pulled out from my shelf a book that was written by Harry Stein called Ethics and Other Liabilities, published back in 1982. "This frenzied hustling after the big score has become quite literally inescapable." That was from the book. So the condition we are talking about is one that is certainly endemic to society at large.

I think Robert Maynard was probably more correct last week when he wrote, "If we continue to treat Congress with contempt, the special interests will continue to be inspired to treat them well and reap the benefits of democracy for themselves." He went on to argue that inadequate pay for Members of Congress is part of the problem.

I realize from what the chairman said earlier that, that is the province of the Swift Task Force so I wont' get into that question——

Mr. Fazio. Don't hesitate to get into it. It is something we would love to hear you talk about. [Laughter.]

And it certainly is within the province of this task force. The issue I was pointing to was the personal use of campaign funds in retirement.

Mr. Anderson. Unlike the first Congressional witness that testified this morning, I do think a problem has developed with respect to honoraria. In reviewing my testimony, quite frankly, at that time I said that I thought that a well prepared, well delivered speech from a knowledgeable Member of Congress was worth something.

Today, albeit grudgingly, I have come around to the point of view that perhaps it would be better to not simply have a limitation on honoraria as we presently do, but to abolish honoraria—with the expectation that we would then properly compensate Members of Congress so that they would not have to depend on outside sources of income.

In a very important sense, current concerns about Congressional ethics are a direct spill-over from a virtual avalanche of disclosures about unsavory and illegal practices in the business community where conflicts of interest and efforts to exploit and conceal have become an art form. The question for you, of course, is: how does a representative body police its ranks? How does it drive the money changers from the temple if such there be?

There is one school of thought that believes that you do not do it with rules and regulations. James Driscoll, who is the Editorial Writer for the Fort Lauderdale Sun-Sentinel had this to say last week: "It doesn't take pages of detailed rules for an ethical person to know what's right and what isn't. Get rid of the stock. Stop trying to become a billionaire. Avoid conflicts of interest, all of which are clear on their face. Get off everyone's payroll but your own. Don't peddle your influence." Then he continues, "Is that so complicated? Of course, if the Member of Congress wants to seem obtuse, he certainly has the power to do so, so he whines about unclear rules or unfair criticism."

There is a lot of that I could agree with, but I do think that the assertion that all conflicts of interest can be avoided because they are all clear on their face is a statement to which I would take exception. Sure, they certainly ought to be avoided. I am not so sure that they are all clear on their face.

In the limited time that I have left let me make just one or two points. In the week or so that I had to do some research after the invitation came to appear here this morning, I looked at the Codes of Professional Responsibility that have been put together in a publication by the Staff Editor of U.S. Law Week.

Obviously some of them would be quite inappropriate for your consideration as you go into executive session and try to determine what precise changes in rules and regulations you should make. I looked at three in particular.

I looked at the American Bar Association Model Code of Professional Responsibility together with the Model Rules of Professional Conduct, and finally at the American Bar Association Code of Judicial Conduct. The first code that I mentioned, the Model Code of Professional Responsibility makes a distinction between ethical considerations which are only aspirant and the rules which if violated can actually trigger disciplinary measures.

Canon IX of the Code states that a lawyer should avoid, "Even the appearance of impropriety," but the canon title in the model code is not a rule per se. Some courts have resorted to it in various cases as a broad standard of conduct, but the model rules themselves do not proscribe the appearance of impropriety.

However, when you go to the Code of Judicial Conduct, the ABA Code, Canon II says that a judge should—

> Avoid impropriety and the appearance of impropriety in all of his activities.

Paragraph B of Canon II reads:

> A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others, nor should he convey or permit others to convey the impression that they are in a special position to influence him.

Now on this standard of avoiding even the appearance of impropriety, there is the following commentary when it was adopted in 1972:

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. Me must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen, and he should do so freely and willingly.

The language of the Code of Official Conduct of the House at least as it is contained in this 1986 edition parallels that language in Rule 43. It says in part:

> That a Member of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

It seems to me, that is a much broader standard than what we have in the Judicial Code of Conduct. One of the criticisms that you hear, particularly maybe after you leave this body, is that Congress too often is inclined to not put itself in the same position as other groups in our society. I think that perhaps by adopting the language of the code that I have just quoted, maybe you could impose a stricter proper standard.

In the case of the judiciary, the code referred to does not bar extra-judicial duties. So often we are reminded that Congressmen have to get out and be involved in a wide range of community activities. But it does specifically and expressly permit avocational activities, civic activities, and charitable activities.

Then in Canon V, which deals with conflicts of interest, Paragraph C specifically says that—

> Members of the judiciary should refrain from financial and business dealings that tend to reflect adversely on his impartiality or interfere with the proper performance of his duties, exploit his position, or involve him in frequent transactions with persons likely to appear before him in his official position.

Again, the commentary on that particular canon, Canon V, states:

> It may cause temporary hardships in jurisdictions where judicial salaries are inadequate and judges are presently supplementing their income through commercial activities. The remedy, however, is to secure adequate judicial salaries.

I remember in Mr. Obey's report of the Administrative Commission a dozen years ago, in answer to the complaint that limitations—15 percent at time, I believe—were placed on outside income, he said that the task of his commission, their charter and their mission, was not to make it easier for Members to exploit opportunities for outside income. It was to deal with the fact that at that time, there was talk about an institutional crisis because of a lack of confidence in the integrity of Congress as an institution.

Mr. Chairman, this is a very brief attempt to direct the commission into the path that I have suggested. Maybe by looking at other codes of conduct, and more specifically, the ABA Code of Judicial Conduct, there is language that could be imported into either the rule itself, which I think is Rule 43, or into the rule that deals with financial activities or possible financial conflicts of interest.

Then, when the work of this Bipartisan Task Force has been completed, the public will indeed be left with the feeling that you have tried in a very serious and responsible way to deal with the problem. Thank you.

Mr. **Fazio**. Thank you, John.

I think it would be best to have all four of you make your presentations and then we will take questions from the members of the committee.

John Buchanan, let's hear from you next.

STATEMENT OF JOHN H. BUCHANAN, JR., A FORMER U.S. REPRESENTATIVE FROM ALABAMA

Mr. **Buchanan**. Thank you, Mr. Chairman.

When I first went into the Jefferson County Court House at age 21 in my home city of Birmingham, Alabama, I found a group of black people sitting around a table pouring over a thick sheaf of paper. I began to leaf through it and I realized that literacy test would have required a graduate degree in history or political science in order to pass it. I went up to the registrar and said, "Sir, I am very embarrassed. I just graduated from college, but I don't think I can pass this literacy test." He said, "Who was the first President of the United States?" I said, "George Washington," and he said, "You just passed the test."

I used that true story last year in arguing for my fellow Alabamians to contact their delegation to get them to vote for the Civil Rights Restoration Act. In that radio talk show I made my case and a fellow called in and said, "You have proven that we shouldn't listen to you." I asked, "Why," and he said, "You just told us that you can't even pass the literacy test." That being the case, I don't have a written statement. [Laughter.]

Mr. **Fazio**. I guess we should thank you for that.

Mr. **Buchanan**. For comparable reasons, I will defer to my colleagues like John Anderson, Otis Pike and Chuck Whalen and to my former colleagues on the committee for the specifics of what you do about the rules. I think John Anderson has given you good counsel.

I would like to talk briefly about the Congress itself and about some principles and some problems. It has been my considered judgement, after being a part of this place for 16 years, being involved with the Congress for nearly 25 years, and having been a part of the clergy for more than 35 years, that first of all, the Congress is like a mirror reflecting what the American people are. You see reflected here the strengths, the weaknesses, the idealism, the pragmatism, the irascibility and the diversity of the people themselves.

Toward the end of my own career as a sitting Member of the Congress, I helped a group of authors—they were religious folk—who wanted to do a book on how religion impacted the lives of the Members of the Congress, how their faith impacted their decisions and their sense of ethics. So I helped to arrange about 100 interviews with Members of the House and Senate. They were in-depth and honest and I think that they got at the truth of the matter.

After those interviews, the people added an additional chapter to their book underlining the fact that in their judgment, the average Member of the Congress was a cut above his or her fellow citizens in the matter of ethics. I would go beyond that. I have been a part of the clergy for a very long time. I often shock church groups by making the point that in my judgment, the ethics of the Members of the Congress are higher than the ethics of the clergy and that church politics is a much meaner kind of politics than that which one normally sees around here.

I seriously believe that is the essence of the case. I believe that, as I have known them through the years, the Members of the Congress do generally reflect credit on the House of Representatives. I think that generally you reflect those qualities and values that one would seek in someone who holds the sacred trust of public office.

Frankly, I think you ought to do so. You should be setting an example as people in positions of public responsibility.

Yet, though I believe that to be the case, it has long been true that the Congress as an institution is not held in great trust or high regard by the American people. We really have had a two-way loss of trust, I think: a loss of confidence by the Members of the Congress in the willingness of the people to give you the permission to make the hard choices and to get at cures rather than applying bandaids, but also even lower confidence than has historically been the case by the people in the Congress as an institution.

For years now the polls have shown that if you ask an American citizen what he thinks of the Congress, the report is very negative. There is very little trust or confidence. If you ask them about their Congressman or Congresswoman, the results are the opposite. "He's all right or she's all right. It's the rest of that crowd that I don't trust."

That has been true for years and is still true. The level of reelection on the part of incumbent Members of the Congress may reflect many things, but it has to reflect some degree of trust and confidence on the part of the people in their own elected Representative in the Congress.

I do not really know how you can get at rules that will clearly correct this basic problem of mistrust of the institution of the Congress. Certainly there are some things that have contributed to it. Wrongdoing here and elsewhere, as John Anderson commented, certainly has something to do with it. Negative campaigning. Particularly with the advent of television and our experience in recent years, we have turned negative campaigning into a fine art. As that continues all over the country at every level, particularly among Congressional candidates, we further blacken the image of the institution of the Congress.

I think the press has contributed. I remember when I came to Congress, we were allowed three round-trips home per year at government expense and the stationery allowance was about $2,500 or $3,500 per year.

I was a young activist, so I went home 30 times per year. I put out regular newsletters. I did questionnaires regularly and I was therefore exceeding my allowances by thousands of dollars every year. Some of it came out of my hide, out of my salary, and some of it I raised from constituents to help me with these official expenses.

That is no longer permitted and should not be permitted. But it was the only way that I had of really doing the job I felt needed to be done for my constituents.

You still face that basic problem and the press. The Birmingham Post-Herald and the Birmingham News hardly ever agreed on anything, but every time we would add to the allowances, add to the trips home, add the staff capability in order to serve a Congressional district better, they would sing with one voice in perfect harmony of the evils of a Congressman providing himself more free trips home.

I had a wife and two little girls in suburban Washington, which is where they had to be if they were ever going to be with me on any regular basis, and when I would go home and leave them for a weekend to go home and work, I had a free trip home. That has been true through the years all across the country.

I think the most recent performance of the Fourth Estate was as bad as any I have seen. The demagoguery connected with the pay-raise issue of this year was as bad as anything I have ever seen from the Fourth Estate. I must tell you that I do not know how you can solve the problem of outside income without an increase in income for the Members of the Congress.

I know the country does not understand it, but there are working wives in the Congress and working husbands as well. In many families, that needs to be the case for the sake of education of children. That is a difficult problem. When is a wife working legitimately or when is somebody doing a favor that is unethical or illegal to a Member of the Congress?

On the matter of honoraria, I do think you should treat writing and speech-making more the same perhaps. I think that it is at best something of an evasion of the rules for a Member to get around the income limitation on honoraria by some other device. That appears to be simply getting around the rule on limitation on that particular kind of outside income. I do hope you will address that problem.

I believe, however, that the basic problem can not be solved without an increase in compensation, officially, to Members of the Congress. Otherwise, you have to permit outside income and you have to be very careful how you handle the situation of working spouses.

A second thing that concerns me is the ombudsman function of the Congress. The only good business opportunity that I ever had when I was a Member of the House was that I bought a little share in a business that proved to be a very profitable one. It still is. It would have been a very good investment.

But almost immediately they developed a problem where they needed my help. I would have helped any other business that had a similar problem in that Congressional district, nothing unethical or improper about that. Only now I had an interest in that business, so the only way I could figure out to handle it was to sell my interest in order to fulfill my ombudsman function which has become a rather important part of the work of a Member of the Congress.

That is a difficult area, too. Who has a direct interest in legislation? Almost everybody does.

How you delineate between a normal proper role of protecting people and legitimate interests in your Congressional district and giving improper help to someone who has a direct interest in legislation is a difficult problem.

I do not agree with Jimmy Swaggart, my fellow clergyman, more or less, that the Holy Bible is the Constitution of the United States. I have seen him say that on television, and I do not agree. I don't think there should be a religious test for public office and I do believe in the separation of Church and State.

However, I do think we can gain wisdom from such sources. That portion of Scripture that is common to Christians and Jews has in a number of places—in Ezra, in the Psalms, in Isaiah, Jeremiah, and elsewhere—words to the effect that the Law of God is written on our hearts.

I sincerely believe, personally, that down where you live, unless you are some kind of a sociopath, you know when you have done right and you know when you have done wrong. I think it is very difficult to devise a set of rules that will guarantee that no one will use the letter of the law to get around the spirit and the intent of the law. So in the last analysis, it must be left to the individual Member to reflect credit, to be a part of the strength and purity of our Republic, and I think it is your obligation to do so.

I also think that is the case with most of the Members of the Congress. Thank you.

Mr. **Fazio**. Thank you, John. We appreciate your being with us today.

Otis Pike, please proceed.

STATEMENT OF OTIS G. PIKE, A FORMER U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. **Pike**. Mr. Chairman, Madam Co-Chair, and Members of the Committee, I was in trouble enough before I was asked to follow a preacher. Having been asked to follow a preacher when I have also joined the media—now I know I am in real trouble. [Laughter.]

I expect that my presence here today is a waste of your time and my own. You will not agree with anything I have to say and if you did, you wouldn't care to say so because it would be politically unwise. Nevertheless, I appreciate the opportunity to get some very strong feelings, long held, off my chest.

Ethics has replaced mom, the flag, and apple pie as something that one simply must be for these days. You not only have to be for it, but you have to appear to be doing something about it. We are not sure whether the word is singular or plural. We may not be able to define it, but ethics is or are "in" and must have their or its day.

So did the pursuit of witches in New England and heretics in Spain, both embraced by gentlemen so positive that they were uniquely qualified to oversee the morals of others that they had no qualms about inflicting excruciating pain on those others—always, of course, in order to make them better people and the world a better place.

In the book Congress and the Nation, Volume I, covering the 20 years from 1945 to 1964, the word ethics can not be found in the index. That is not to say that the government can not and does not Constitutionally legislate morals. It requires businesses to close on

Sunday, and then it changes its mind. It says that booze is unlawful, and then it changes its mind. It established red light districts, moves them, and closes them. It says that gambling is illegal and then it conducts lotteries.

When you legislate ethics then, you are shooting at a moving target. Anybody that can take 10 or 20 years pondering what to do about easy issues like acid rain, and where to dispose of nuclear waste may have a little difficulty giving enough lead to targets that have puzzled all the religions of the world for millennia.

Take a concept like conflict of interest. At one end of the spectrum it is easy and pure black. You don't take bribes—you go to jail if you do. But that has been a crime since before there was a Congress.

It gets grayer. You don't take a political contribution in exchange for a promise to do something. The old quid pro quo test. How about a promise to consider something? To keep the door open? To answer the phone?

How about taking contributions from somebody who wants something, like a PAC? They wouldn't exist if they didn't want something.

At the other end of the spectrum the idea of conflict of interest is almost pure white. Your job is conflict of interest. Do you consider first on any given issue, your conscience, your country, your district, your party, or the next election?

The easy answer is that you never let self-interest interfere with the common good. Easy answers are best couched in elegant words that mean whatever you want them to mean.

If you have an account in a savings and loan, is it in your self-interest to bail them out? Sure it is. Should you vote on it? Yes. If you have stock in a savings and loan, should you vote for their bailout? I say, no, but I am not so sure. I would be more sure if it were 1,000 shares than if it were 10 shares.

So if you had to paint a portrait of ethics, you would need a lot of shades of gray. So, to mix a couple of metaphors, you take this fast-moving gray target and try to write rules that will hit it. And that is the easy part.

Then, you ask an institution that was wholly designed to accommodate partisans to enforce those rules without being partisan. You are asking pigs to fly.

On July 30, 1979, there was a recorded vote on a motion to table a resolution calling for the expulsion of Representative Charles Diggs, Jr. The vote was close, 205 to 197. The resolution to expel was partisan, the motion to table was partisan, and the vote was partisan. Republicans voted 10 to 1 to expel, and Democrats voted 3 to 1 not to. That's partisan.

In their proceedings against Jim Wright, I believe that the Ethics Committee did the very best they could. I think they did their darndest to be judicious. However, no one can look at the pattern of the votes in that committee without seeing some partisanship. If the matter ever reaches the Floor of the House, anyone who believes that Democrats will vote the same way Republicans do believes that, at least, elephants and donkeys can fly.

I believe that the morals and ethics of Congress are high. Democratic ethics are no higher than Republican ethics and Republican ethics are no higher than Democratic ethics. A wholly political institution, however, will never make wholly non-political decisions in tough cases.

That is by no means the worst part. You were not sent here to peak through the windows of each other's private lives. You weren't even sent here to appear ethical. You were sent here to pass laws and solve problems.

Your preoccupation with each other's ethics is preventing you from doing your jobs. It is taking too much of your time, and worse, it is creating an atmosphere and an institution in which suspicion, bitterness, personal dislikes, and private vendettas make cooperative efforts in writing laws increasingly difficult. That is serious.

The Founding Fathers did not write into the Constitution any requirement that legislators, presidents, or judges be ethical. They had enough faith in the people to elect good officials. They did write in provisions for removing bad ones.

We have less faith in the people now, which is fair, for after a generation of legislating ethics they have a lot less faith in us. In 1965 a Lou Harris poll found that the public approved of Congress 64 to 25. In 1987 a poll by U.S. News and World Report showed that a majority of those polled believed that many or most government officials took bribes.

Unhappy with our 64 to 25 favorable rating, we went to work. In 1968 the Congress broke with the system that had worked fairly well for 179 years and wrote its first financial disclosure law. We hoped that the public would hold us in higher esteem if we stripped financially in public.

We were rewarded by being held in the same lofty regard as other strippers. Instead of applause, we heard only the ancient and endless cry of the voyeurs, "Take it all off." [Laughter.]

Nineteen hundred and seventy-six was a terrible year. Congressman Wayne Hayes put a girlfriend of minimal secretarial skill on the payroll and married someone else. The girlfriend then blew him away in the Washington Post. It was juicy.

Andrew J. Hinshaw was convicted on two counts of bribery. Henry Helstoski was indicted for taking bribes to introduce immigration bills. Allan T. Howe was found guilty of soliciting sex from two undercover police women posing as prostitutes.

A steady dribble of leaks from the Justice Department named seven Congressmen as having gotten large gifts from a South Korean businessman named Tongsun Park. Former Representative Jim Hastings was indicted for having taken kickbacks from his staff. The law enforcement authorities had acted in every one of those cases, but the public outcry was so loud that we had to get in the act, too.

The Congress had passed a Code of Conduct for Federal Employees in 1958. Charlie Bennett wrote it and it was just grand—11 sentences. In 1977 a committee headed by David Obey wrote infinitely more comprehensive rules of behavior that had only one salutary effect of which I am aware. They drove me out of the Congress and enabled me to earn a lot of money. [Laughter.]

They key word is earn. Charlie Bennett's 11 lines turned into a code so tangled that Mr. Obey recently referred to it as a "thicket" and so confusing that he recently accused the Ethics Committee of not understanding their own rules.

Have they made the House a more ethical place? They have not. In the 10 years before 1977, 12 Members of Congress were indicted and convicted or pleaded guilty to serious crimes. Three pleaded guilty to misdemeanors.

In the 10 years after 1977, 17 Members of Congress pleaded guilty to or were convicted of serious crimes and two were allowed to take counseling on sex offenses. The charges against the 19 post-ethics transgressors ran the gamut from driving offenses through sex offenses to very serious charges of taking bribes.

They included members of both political parties but they had one thing in common. With one exception, every convicted criminal who had been here in 1977 had voted for ethics. The one exception was on the committee that wrote the code. All of the charges were prosecuted by Federal or local prosecutors who are always delighted to bring charges against Republicans or Democrats alike with even-handed nonpartisan fervor.

Are the rules ethical? Well, yes, but they are largely political. They were created because of public revulsion at the Watergate, Wayne Hayes, and other scandals.

The concept that unearned income is ethical but earned income must be limited reverses the ethics of Horatio Alger and, at least, the Democratic Party. It was a political decision made necessary by the fact that there were already so many rich people in Congress that they could not have passed the bill if they had limited unearned income. They treated rich people better than poorer people, which is a peculiar ethical fixation.

For political reasons, proper loopholes were created for important people. The Majority Leader of the House and the Chairman of the Rules Committee and some other mavens had written books, so book royalties were exempt.

Since leaving Congress, undefeated and un-indicted, I have made some money writing a syndicated column—earned money, thus, unethical. If I had taken the identical columns, bound them into a book and collected royalties on them, I could have rendered the same words ethical. Nonsense.

Members of Congress should be able to write books or teach or farm or practice law or medicine or engage in any lawful activity in which they engaged before coming to Congress. They should disclose where their money comes from and trust the people to judge their behavior. You are not going to get or deserve the esteem of the public by treating yourselves as second-class citizens or by treating wealthy Members better than non-wealthy Members.

There are very fundamental reasons for this. Your rules are not bad because they are political rules, politically enforced, or because they are incomprehensible, or because you are so preoccupied with them that you can't get around to doing your jobs. It is worse than that.

All over America thousands of good and honorable people look at the environment you have created here and decide they would never be interested in entering that environment. They take pride in their own morals and their own ethics. They value their privacy. They do not undress in public.

There is a gentle book that has been on the best seller list for a long time. It is "All I Really Need to Know I Learned in Kindergarten," by Robert Fulgham.

The title story reminds us that we learn the rules by which we conduct our lives very early in life. We bring them with us to Congress. We tell the truth about our allies and our opponents. We don't cheat or steal or take bribes or tolerate people who do. We serve our country when our country needs us and carry our ideals and loyalties and ethics in our hearts and not on our sleeves.

No one learns his ethics in Congress. No one needs to be told by his colleagues what is right, fair, and honorable. There are plenty of criminal statutes by which to prosecute those who violate the standards of our society.

Ethics is not as great a problem with Congress as is courage. Your ethics rules have emasculated you. Not all of you—a few are still willing to stand up and say that you deserve a pay raise or to vote against the defense bill or for a tax increase or vote against Israel when you are convinced she is wrong or to say no to any powerful lobby—but most of Congress.

This was the inevitable result of the earned income limitation. When you cut a Member off from the honorable work he did before he came him, made him burn his bridges, made him have to keep his job to feed his family, you sapped his courage. He has to get reelected. This makes him less courageous and less ethical.

This nation was built by men who couldn't and wouldn't have lived by your rules. They were terrible men who drank, caroused, and gambled. Some kept mistresses and some were worse. They connived and made deals and some grew rich in office.

Robert Morris of Pennsylvania, who the old textbooks called the Financier of the Revolution was asked to get ammunition for Washington's Army. He did, through his own trading company and wrote, "There has never been so fair an opportunity for making a large fortune since I have been conversant in the world."

Daniel Webster said that the birthplace of the Nation was a tavern in Boston. The Marines were born in a tavern.

You can talk about ethics forever and pass more rules and reveal yourselves until all of your and your spouse's finances, food, drink, sex, and religion, clothing, vacations, and the hours and minutes and places of your arising and retiring are public records. You will never be held in high regard or deemed ethical while you say that you can not balance a budget unless a Constitutional Amendment makes you; while you accept gloriously optimistic projections rather than deal with real ones; while you write a Gramm-Rudman Bill and then spend days finding ways to get around it; while you let one man make $550 million per year while others sleep in the streets.

Former Ways and Means Committee Chairman Wilbur Mills could have been booted out of Congress. He was an alcoholic and he fell for a stripper named Fanny Foxe and he chased her right up on the stage. He did not reflect credit on the institution. His ethics might have been deemed a trifle too shabby. But he would never have tolerated the fun and games, smoke and mirrors, and moving costs off-budget from year to year and annual deficits and growing debt that have transferred us from the biggest creditor to the biggest debtor nation in the world.

I will close with the words of Abigail Adams, who at the birth of the Nation said, "We have too many high sounding words, and too few actions that correspond with them."

Mr. **Fazio**. Thank you very much, Otis, for at least fulfilling, perhaps exceeding, our expectations here this morning. [Laughter.]

Charles Whalen, please.

STATEMENT OF CHARLES W. WHALEN, A FORMER U.S. REPRESENTATIVE FROM THE STATE OF OHIO

Mr. **Whalen**. Thank you Mr. Chairman, Mrs. Co-Chair, and Members of the Task Force on Ethics. I am delighted to be here this morning to appear before this distinguished group.

When Don Wolfensberger called me and asked if I would appear, I inquired as to whether I was being asked as the good example or as the bad example. Don did not answer that question.

You all face a number of problems when you retire from this body. I can recall Otis Pike's comments. When asked what he missed most when he left Congress he said, "The parking space at National Airport."

I suppose we also miss our staff. I say that because, while I have written my speech in my head, I have no staff with which to translate it on paper. So if these proceedings are being recorded, Mr. Chairman, I would ask unanimous consent that I be allowed to revise and extend my remarks.

Mr. **Fazio**. We would be more than happy to even deliver a copy of them to you. [Laughter.]

Mr. **Whalen**. I haven't forgotten some of the key phrases in the 10 years I have been out of this body.

Let me just say this and perhaps I am echoing what has already been said and putting it in a little different way. Your Task Force and the so-called Ethics Committee, it appears to me is interested in two related problems as it applies to House Members.

First is possible conflict of interest. Second is acceptance of undue legislative influence. In dealing with these dual problems, it seems to me that the Ethics Committee or the task force, in making recommendations to the body, has a real definitional problem.

How do you define conflict of interest with specificity? How do you define acceptance of undue legislative influence? As I say, you have a real problem here. In dealing with particular problems, you so often have to come up with subjective analyses.

Before addressing three of the issues with which your task force is dealing, let me make three prefatory comments. First, I think we have to recognize that every citizen has an interest in legislation. The unemployed person has an interest in unemployment compensation benefits. The retired person has an interest.

What about the business person? Let's say a man who is worth about $250,000 is considering selling his business to achieve a capital gain. Is that a direct interest?

On the other hand, an individual worth a billion dollars who, perhaps being subject to a take-over, will make a huge capital gain—does that person have a direct interest? Do you distinguish between the two? I am suggesting that everyone has an interest in legislation and it is very difficult to come up with some specific definition.

Second, I think we have to remember that every Member of Congress comes into the House or Senate with interests. Certainly one can not disassociate himself or herself from previous activities, be it in the professions, the field of education, as a labor union member or organizer, or as a business person. It also seems certain to me that one's sex, race, and religion may have a bearing on how that particular individual may vote. Yet with that background, that Member has been elected by his or her constituents.

Third, I think we also have to remember that each of the Members has a direct interest in the common concerns of his or her Congressional district. Otis Pike's presence here reminds me of an example.

A number of years ago as a Member of the Armed Services Committee, Mr. Pike fought the so-called Lockheed bail-out bill. I joined him in that effort. I can remember also a colleague of mine from the State of Michigan who also fought very effectively against this bill. Despite this fact, it passed.

After I left Congress, the Chrysler Loan Bill came up. You can imagine where this individual Member from Michigan stood on that one. He completely changed his position and was one of the leaders in supporting that legislation. Obviously, if he had not done that, he would probably not be in Congress today. What I am suggesting is that Members do come to Congress with common interests with the districts which they represent.

Now, with that background, let me address three of the issues that are of concern to your task force. The first one has to do with the question of gifts.

The Code of Conduct limits gifts to no more than $100 from lobbying organizations, the officers or directors of them, or those hired to work for those organizations, from PACs, and from those with direct interest in legislation. It seems to me that is pretty difficult to define with any degree of specificity.

As I see it, there are probably two kinds of gifts that we might address. One is what I would call the ordinary gift of cash, some kind of merchandise, perhaps some service, such as a vacation quarters, and so forth. The other is what I would call a kind of special commercial gift. By that I mean a gift which the Member is privileged to obtain while others in the community or marketplace are not permitted to obtain it.

I think that perhaps the best way of dealing with the question of gifts is simply to disallow them, to forbid them—no gifts. In terms of an ordinary gift, what does a person receiving $89,500 need with, let's say, another set of golf clubs?

I also think you should recommend to the Ethics Committee and to the body as a whole that language be put in defining more clearly what I would term as privileged commercial transactions, privileged for the Member. I would certainly suggest that you prohibit the purchase of stock or bonds at less than the established market price, giving that individual an advantage over the balance of the market. I would also suggest that you prohibit an advance sale to a particular Member before the public itself is able to purchase that particular instrument, be it a stock or bond.

Moving on to the second issue with which you are dealing, income and financial disclosure, I am like Mr. Pike. I have been concerned for a long time about the difference, the differentiation, the distinction made between earned income and unearned income.

Due to provident parents and in-laws I happen to fall into the happy category of those receiving a fair amount of so-called unearned income. I really don't see much difference in terms of possible improprieties or possible appearance of conflict of interest between that unearned income and earned income. Let me give a personal example.

When I was elected to the House of Representatives in 1966, I served on a bank board. I remained on that board for, I believe, a year or a year and a half. I finally left because I could not attend the meetings. They met on Tuesday.

I also thought that it appeared to be a conflict of interest. I really did not make any moral judgment. I just simply did not want that to come up as a campaign issue, to be very frank about it.

That fact notwithstanding, as I suggested before, I came to Congress as a director of a bank. Furthermore, I held substantial stock in that financial institution. Now the holding of stock—is that any different than earning income in the form of payments at each of the board meetings?

There is another concern that I have. That is that somehow, you look at 30 percent earned income of the Member's pay as somehow not being an appearance of conflict of interest. But 31 percent is, I take it? How can that be?

I have three suggestions in the area. First of all, I think you should excise honoraria from the earned income category. Make that a separate category. I will say more about that in a minute.

A second suggestion is that since, in my mind at least, there is no real distinction between earned income and unearned income, you should do away with this 30 percent limitation. If an individual who is a doctor, for instance, has some patients that he wants to treat upon returning to the district for the weekend, that is his business. The same applies to a dentist or a lawyer handling a divorce case.

Now the question is raised: doesn't this take away from his or her legislative duties? Well, it seems to me that the best judge of that neglect of your legislative responsibilities rests with the constituents themselves.

My third suggestion is an exchange for doing away with the 30 percent limitation, excluding this separate category of honoraria. I think that there should be much more comprehensive financial disclosure.

I was reviewing my own which I submitted in 1978. I guess I really did not have to do this since I had already announced my retirement, but it is over three pages in the Congressional Record.

What I did was to include all of my assets, my wife's assets, liabilities, and my six minor children's assets and liabilities, and in addition to that, a complete income statement of myself, my wife, my six minor children, the income, the source of it, as well as any claimed credits that we might want. I would suggest that this be applied in exchange then for the elimination of the 30 percent requirement.

Again, this does away with the question of lack of specificity. It seems to me that complete full disclosure then could best be subjected to judgment by the Members' constituents rather than by the Members of the House of Representatives.

Finally, with respect to honoraria—it seems to me there are two kinds of honoraria. One is received from those who absolutely clearly have no interest in legislation and the other, from those who do.

Like many of you, I wrote several Op-Ed pieces for the Washington Post and the New York Times when I was in Congress. In a sense, I guess I was lobbying rather than being lobbied because I was stating a position.

I can also recall, since I taught economics at the University of Dayton back in Ohio before coming to Congress, I was invited to Brookings Institution from time to time to talk about current economic situations, for which I received a modest stipend. I suppose this involved no appearance of conflict of interest.

What does concern me though is the honoraria received for appearances from groups and organizations that are interested in legislation and the legislative process. I think again, for the sake of specificity, the best answer for this is to eliminate all honoraria.

It seems there are two issues involved. One is that the job, the responsibility of Members of Congress is communication, I think. Really, the essence of representative government is communication. Gaining information from constituents, those whom we serve, and at the same time imparting information, explaining votes, explaining the issues—to then be paid for doing this, for addressing groups, seems to me to go over and above the salary which the individual Members are already being paid.

Also, it seems to me that those who pay honoraria for appearances before interest groups make the playing field somewhat uneven. It seems to me that it gives them an advantage that does not accrue to others in society. I would therefore suggest that honoraria be strictly prohibited for those reasons.

It has been argued and we have heard this addressed by the other members of the panel that we have to have honoraria to compensate for the salary that we receive. I would add my comment to those already stated that I think the salary should be increased. I know this is not within your purview, but let me make one suggestion.

That is, to avoid any appearance of conflict of interest, that the vote on the salary be such that the salary increase occurs in the following session of Congress. I offered this amendment when I was a Member a number of years ago. We had a good debate but it was defeated. I do think that in this way, one can perhaps avoid the charge that he or she has voted to increase his or her salary.

Mr. Fazio. Thank you very much. We appreciate your comments.

Now, just to pick up on your last point, Mr. Whalen, I think it is within this task force's purview to discuss outside income, honoraria, and perhaps pay. I don't know if we will come up with any recommendation that we would make, but certainly all of your comments lead us in the direction of attempting to increase compensation at the same time as we perhaps divest ourselves of honoraria or at least disclose more clearly other sources of income that people have become reliant upon in the era in which salary has not kept up with the cost of living.

We appreciate very much the time you have given us thus far. I am sure there are some members of the committee who will want to ask a question or two.

Let me first yield to my Co-Chair, Lynn Martin.

Mrs. MARTIN. The Congress lost a lot of accumulated wisdom and it was good to have it back today.

I am glad to know that you are making so much money, Mr. Pike. I enjoy your column in the Sun-Times. Glad to hear it. [Laughter.]

I have to say this because I think it was about this time nine years ago that my predecessor on my first trip to Washington bought me iced tea in the Members Dining Room. I think it was perfectly legal and so I will publicly thank him.

John, it's good to have you here.

Mr. ANDERSON. Yes, it was under $35.

Mrs. MARTIN. Yes, I think it was. It is still the same lousy iced tea you will be having today.

Mr. FAZIO. Mr. Obey?

Mr. OBEY. I have spent so many years dealing with these issues that I do not want to have to ask another question ever on the subject. I would simply observe that Otis has lost none of his delightful irascibility, which we have all come to appreciate.

Otis Pike was my friend before the ethics reforms, during the ethics reforms, and he is still my friend, I am proud to say. I have tremendous respect for him.

I think that his testimony and the others today simply illustrate that there is a very wide range of opinion about how we ought to define, or whether in fact we ought to define in any way, the conduct of Members. I guess it comes down to the question of whether or not you believe simple disclosure is enough to deal with the issue.

Our commission took a lot of testimony on both sides of that question. We had a number of very respected people, including some very respected members of the press who suggested that we simply rely on disclosure and not limit in any way the income of Members.

The judgment in the end was simply reached. It would be delightful if we did live in a truly classical world and if we could in fact rely on individual constituencies to rid this body of Members who were in fact an embarrassment to us. It was decided that could not always be relied upon because, for reasons of personal influence, a Member who engaged in outrageous conduct might continue to be elected.

So we felt that, to protect the institution rather than to protect the individual Members within it, we had to have some rules. They may have been the right ones, and they may have been the wrong ones, but I think that these gentlemen here today have certainly indicated all of the facets of the problem that we have to wrestle with when we deal with this business.

Thank you all.

Mrs. **Martin** [assuming Chair]. Mr. Livingston?

Mr. **Livingston**. Thank you, Madam Chairman.

I do not have any questions but I do want to thank all the members of the panel for their very thoughtful presentations. You have been a great help.

It is a difficult subject, as Mr. Obey has said. I think that each of you in your own way has said that there are no quick and easy answers. We are going to have to tackle it the best we can.

I do not think that we can necessarily say that it is broken, so therefore it should be fixed, but by the same token, it does need adjustment. We do have some problems that we have to try to correct, and we do appreciate your input.

Mrs. **Martin**. Mr. Stokes?

Mr. **Stokes**. I certainly want to join with my colleagues in expressing to each of these gentlemen, all of whom I have served with, what a great pleasure it is to have them come back today and share such thoughtful and reasoned expertise with us.

There is one area in which I wish you would try if you can to give us a little more specificity with reference to your suggestions. That is this area of direct interest in legislation. You have touched upon it in your presentations.

What type of approach ought we to be looking at in terms of a definitive understanding of what the term means. Any of you want to try to give us a little insight into how we ought to approach definition of that term?

Mr. **Anderson**. I tend to agree with Congressman Whalen when he suggests that every person has an interest. Therefore, this is an enormously difficult problem on very tricky terrain to try to negotiate. Just for starters, it seems to me that a person has a special interest in legislation pending before the Congress if in fact there is in that Congress legislation pending which if enacted would tend to directly benefit his particular income-producing business or enterprise.

Obviously, that is going to work to the disadvantage of people who are in industries that are subject to government regulation, be it air pollution regulations, water pollution regulations, or something else in a very wide gamut of activities. Without being repetitious, it seems to me that I would fall back on my suggestion that we borrow from the ABA Code of Judicial Conduct that not only actual, but even the appearance of impropriety in accepting gifts from the kind of individual who is generally known to have interests that are so extensive that inevitably he is going to be benefited by the enactment of pending legislation, or is so affected with the kind of public interest that he is subject to government regulation in one or more areas.

For starters, that would be the very rough outline of where you might try to draft a rule, unless you want to adopt Congressman Whalen's suggestion to abolish gifts altogether. I suppose that might be the easiest way to do it.

Mr. **Pike**. If I may, Mr. Stokes?

Mr. **Stokes**. Please, Mr. Pike.

Mr. **Pike**. I come down quite differently from John on this. First of all, I think that the Ethics Committee, if it deals, should deal not with the appearance of anything. Worse is the appearance of possible something where you get into these realms.

I think you ought to deal with demonstrable conflicts of interest and not appearances. As soon as you get into appearances, your judgments are very subjective. As soon as you get into subjective judgments, they are very likely to be political.

Mr. **Stokes**. Mr. Buchanan?

Mr. **Buchanan**. First let me say that Otis Pike can obviously hold his own in any company. He keeps demonstrating that. But I would like to agree with his last remarks.

I think that in your personal lives, in your individual conduct, you ought to do everything you can to avoid the appearance of evil. I think in terms of the Rules of the House, that is quite a different thing. It should be a demonstrable conflict of interest.

Again, I will raise the problem of your ombudsman function and the difficulty of sometimes delineating between what constitutes a legitimate constituent service to a constituent entity and what constitutes some action taken because of some benefit accruing to you. I think it is hard for me to delineate between what you get from a PAC and what you receive by way of campaign contributions and other kinds of rules.

Mr. **Fazio** [resuming Chair]. Could I just follow up on that?

If we are going to have the kind of more strictly written limited view of conflict of interest—getting away from appearances or possibilities—would all of you agree with the level of disclosure that Mr. Whalen has suggested?

Mr. **Pike**. I am not sure I understand the level of disclosure that Mr. Whalen has suggested. I really am not and I don't mean to joke about it.

I come down, Mr. Chairman, very hard on the concept that the people should make the decisions. Having accepted that as my premise, I think very heavy disclosure is required. They can not make the decisions without the disclosure. Exactly what the specifics ought to be, I don't know.

Mr. **Whalen**. I would certainly agree completely with Otis Pike on this. If indeed, we are going to allow the constituents to make the decision, then I think they have to have all of the facts. It is my belief that the present reporting requirements do not give them all of those facts.

Let me make an addition to that recommendation I made in my earlier comments. I am not sure what the campaign rules require, but it seems to me that if a sitting Member who is running for reelection is required to make these comprehensive disclosures, then also the opponent facing that individual in the general election should be held subject to the same requirement.

Mr. **Fazio**. Mr. Frost?

Mr. **Frost**. I filed the type of disclosure that Mr. Whalen outlined. Every year, I put a balance sheet of everything that I own with actual dollar figures and numbers of stock into the Congressional Record. Very few Members do that, and I don't know whether it is realistic for us assume that we would have the support to impose that.

I have done that voluntarily each year that I have been in Congress, and Mr. Whalen, I will give you a very good example of why, in my own case, I think it is important. I do not own a great deal of stock. I do own a little bit of the stock that I inherited.

Last year there was a take-over going on and I was approached by someone representing one of the parties in the take-over and asked to intervene in some way as a Member of Congress. I told that person exactly the number of shares that I owned in that target company and that I had disclosed that in the Congressional Record.

While it was not a great deal of money to most people, it represented a fair amount of money to me, and I told him that I was not going to take part in that. They would have to go talk to other Members of Congress. I would not be involved in either side of that take-over question because I had a personal financial stake as I had shown in my filing in the Congressional Record.

I personally think that is a good thing for us to do, but I am not sure that you would have majority support in Congress to require that.

Mr. FAZIO. If I could just pick up on that point. It is my understanding that we do not have to disclose IRAs or Keoghs or 401(k)s or any of the other things that most Members these days have most of their investments in. So the questions of how far we go in this area are really appropriate for this committee to consider.

Any others want to respond to my caveat to Mr. Stokes' question?

Mr. ANDERSON. I have some real reservations about getting into the enormously detailed kind of disclosure that apparently Mr. Whalen gratuitously provided his constituents, even in his retirement year. Members can very easily, I think, get tripped up by leaving out some small item and then find themselves the subject of an ethics charge.

I probably disagree with Chuck because I see a difference between earned and unearned income. I see a difference between a director's fee and simple ownership of stock, particularly in a publicly held corporation. So I believe that I would rather maintain some limit on earned income.

I did complain. When I testified a dozen years ago, I said that I thought that the existing reporting requirements were hokey. I don't know whether you still have to seal some of the information for the Ethics Committee.

I see your heads shaking. Apparently you have cleared that up since I last spoke to this subject in 1977. But I think there is a danger—as much as I am in favor of disclosure—of going too far in encouraging everybody, in Mr. Pike's phrase, to become a stripper.

Mr. FAZIO. Mr. Buchanan?

Mr. BUCHANAN. I would air on the side of more disclosure. I think there could reasonably be more disclosure than is presently required, a clearer disclosure. Although that could be embarrassing in some cases. I mean that some of us came here and ended up with liabilities where our assets were supposed to be.

Mr. WHALEN. I might just say that there was not a great reaction to this and I had done it in previous years. Two Members of the House commented on this after having read this in the Congressional Record: Henry Reuss, who was Chairman of the Joint Economics Committee said, "Chuck, you have too much invested in utility stocks for your children." Charlie Vanik said that I wasn't giving enough to the church. [Laughter.]

A reporter put a much lower percentage of my income paid in taxes than my wife and I actually paid, because what he did was to simply add the incomes of myself, my wife, and my six children, taxes paid, and then divided it. Obviously, with children in a lower bracket, the average tax went down, but we decided not to respond to that.

Mr. **Pike**. I would like to make two quick comments. One is, that I would leave the children out of it. Two is, that on the question of earned against unearned, it is easy perhaps where you are dealing with a publicly held corporation, but when you are dealing with a non-publicly traded corporation, you do not know what the stock is worth, you do not know whether or not you have got control in the corporation, and if you do have control, then you do not need the exemption which you have written into your rules because you just stop taking your salary and make it all dividends and you can say, "This is unearned."

Mr. **Fazio**. Sure. If you are a farmer and you stop farming, you can lease out the land and make the money off of the lease.

Mr. **Pike**. If you control the corporation, you can do anything you want with it. You don't need to ever get a salary. You can take dividends.

Mr. **Fazio**. Mr. Morrison?

Mr. **Morrison**. This is a fascination discussion. I would love to have your opinion on how you then reveal to the public a disclosure that means something? Is it in the form of income tax?

Mr. **Pike**. I opted to get out of the Congress. That is one way of doing it, but I don't recommend that for everybody.

I think income tax is a route you can go. I would not go that route. I would go the dividends paid by the corporation and the salary paid by the corporation, but I would make no distinction between them as to what is ethical and what is not ethical.

Mr. **Morrison**. Are there any other responses to that? I think, Mr. Chairman, unless I am mistaken, that we are going to have to wrestle with this.

Mr. Whalen and Mr. Pike have suggested full disclosure taking the place of restrictions, and I guess we would like to pick your brains on what sort of disclosure really works in convincing the public that we have told all.

Mr. **Whalen**. In my case, I did not use the income tax form per se. I think I even went into greater detail than appeared on the income tax statement, plus a balance sheet of assets and liabilities of myself, my wife, and six minor children.

Mr. **Anderson**. I think you can make the valid objection, as indeed people have, that if you have to submit every line item of your 1040, that entitles people to know how much you gave and to what charity and so on. That may not be necessary for the public to know. But to take the items that go into your adjusted gross income as reported to the tax collector—I would see no objection to that.

Mr. **Pike**. I would say this. Do not try to satisfy the public with disclosure. You are never going to satisfy the public with disclosure.

As one who has joined the media let me say that the media will always want you to disclose more. There will never be a point at which you can disclose so much that you can not make their job easier for them if you tell them more.

Mr. **ANDERSON**. Could I say just one word in defense of the idea that does not seem to have been greeted with a great deal of favor here? That is, that the appearance of impropriety, which is something we require of judges, should not apply to Members of Congress. I do not have the entire 245-page manual, but I could point to places in the manual where, under the general ethical standards that are proscribed in that manual—for example, you are "to abide by the spirit as well as the letter of House Rules, generally speaking not to attempt to do something indirectly which you are specifically barred from doing directly."

Then over in Chapter Six, which is the section of the manual on gifts, entertainment, and favors:

> Receive favors or benefits in circumstances that might raise suspicions and create the appearance of influencing the performance of official duties.

It seems to me that in essence, you are saying already in your manual that you should avoid that kind of appearance of impropriety.

I believe that it would have far more deterrent value if you actually put that formally into whatever Rule of the House is going to govern this question of conflict of interest.

Mr. **FAZIO**. I think you really point up in response to Sid's question that dilemma we so often face here. Like obscenity—you know it when you see it—yet, what is obscenity to someone is art to someone else.

That brings us back to Otis' question of how we avoid the politicization of this process of trying to determine the ethics of the institution. That is, why we can not avoid partisanship at some point because, ultimately, that may color how people view art.

That is really where we are caught. We want to make sure that we encompass the various misdeeds in general, but we want to be specific enough to protect the individual's rights and not charge him with some vague error that is going to be hotly debated and not resolvable in any quasi-judicial proceeding, particularly when it is highly politicized. That is really the dilemma that those who sit on the committee here understand from the very beginning.

Mr. Bonior, did you have any questions?

Mr. **BONIOR**. No questions, Mr. Chairman.

Mr. **FAZIO**. Mr. Obey?

Mr. **OBEY**. I think my function on this committee is to serve sort of as the institutional memory bank, clouded though it sometimes is.

I would simply like to make a few observations to suggest that some of the comments that have been made are not quite so simply accomplished. Example: it has been suggested that we should disclose all. I have always favored as much disclosure as possible.

The problem when you run into spousal disclosure and the problem we ran into in 1977 is that when you try to disclose spousal income, you are going to get a spouse who tells you to go to hell in plain language because what the spouse will say is, "I don't mind perhaps disclosing what is legitimately tied to my husband, but should I have to disclose my business affairs to such an extent that my competitors know my operating style and can figure out how I am vulnerable to cut-throat competition?" The spouse will say, "I didn't marry the job—I married the turkey," so that is a very tricky question when you get into spousal disclosure.

Also, it has been suggested that we ought to abolish all gifts. That sounds very good. The problem is that we ran into one case, for instance, of a lobbyist who was routinely signing off high-priced lunches in 1977 which he alleged he had provided to this and that Member of Congress.

The problem was that those Members of Congress had never had those lunches. Yet, a lobbyist chiseling on the facts for his own income benefit can embarrass a whole lot of Members if you do not have some kind of de minimis protection from something like that. That is one of the reasons we provided for the de minimis exemption in the gift rule.

The other point I would make is on outside earned income, to respond to the suggestion that we ought to perhaps eliminate the limitation. You run into real problems when you do that, especially with respect to professional income, because one of the lawyers, for instance, at that time in 1977 came to me and said:

> Obey, you don't understand. It isn't that I spend any time at my law practice. It is just that as I rise in seniority, some of the lobby groups toss more business our way and I just get a piece of the action.

I said:

> I know. That is why we are proposing the rule.

In the end, we probably didn't do in law what I would have preferred to do, which was to simply have a flat prohibition on that for a variety of institutional reasons.

I do appreciate all the comments that we have heard here this morning, but I caution people to get beyond the simple question of whether something looks good on the surface to see whether or not it actually works when you look at all of the detailed ramifications associated with each of these proposals.

Mr. FAZIO. Mr. Stokes?

Mr. STOKES. I just have one further comment with reference to the point that Mr. Pike made, which I think is something that this committee ought to be guided by in terms of more and more financial disclosure. As he has stated, we will never satisfy the media in terms of disclosure.

I would just ask you, now that you are no longer Members of Congress, if you think that your constituents ever really read your financial disclosures, other than what was reported in the newspapers?

Mr. PIKE. Your opponent sure did.

Mr. STOKES. I am sure you are right—and used it.

Mr. WHALEN. I might just add that the comment I made about requiring opponents to disclose, obviously is not within the purview of this tack force or the Ethics Committee, but it certainly should be considered by the body as a whole.

Mr. STOKES. Most of them never comply with any of the standards with reference to filing.

Mr. **Fazio**. They are required to under law.

Mr. **Stokes**. But they don't.

Mr. **Fazio**. It's a question of compliance, I think.

Mr. **Whalen**. Does present law require that?

Mr. **Fazio**. If you are not elected, there is no sanction that anybody can really impose unless, of course, they are going to run against you three times running, as some have done.

There is no question that the issue of unearned versus earned income is divisive within the body, but if we are going to make a case to the average citizen that we need a higher level of compensation in general—it is increasingly being asked of us that this be a full-time occupation. Those of us who might practice a profession or earn income in some other way really ought not to, in order to make clear that this job as a Member of Congress is not something we are doing part time.

I realize that one lawyer is writing out wills and divorces and making his outside income limitation and another is sitting here in Washington with his name on a door somewhere and taking an amount from the firm. Those are very different approaches to legal income.

Is it really important that we limit outside income if we are going to go to the public and ask for 25, 40, or 50 percent increases to recover the cost of living that has increased during the tenure of most of us here in Congress. It seems to me that is a question we have got to ask ourselves.

Are we sending a mixed message to the people? If we think we are deserving of more income, then why should we allow people, particularly beyond honoraria but certainly including honoraria, to go out and earn whatever they can justify, whatever they can bring in, and say that as long as they disclose it, it is okay?

Mr. **Anderson**. Maybe, Mr. Chairman, you could draw a distinction between someone like Mr. Pike, who felt so strongly on this subject in 1978, and who after all brought with him to Congress a particular business interest—you could draw a distinction between that and those who develop this entrepreneurial spirit after they become Members of this body.

Mr. **Fazio**. So we are back at disclosure?

Mr. **Anderson**. Yes. I can see a little difference between someone who comes to Congress as a farmer or as the head of a psychiatric hospital or what have you and someone who decides that he is going to try for the big score after he gets here.

Mr. **Fazio**. Mr. Livingston?

Mr. **Livingston**. Mr. Chairman, I was not going to ask this, but I think it would be interesting to hear the comments from the panel, so I will throw it out.

One of our Members was convicted a few years ago for having filled out his financial disclosure form, omitting some material. There was never any perjury notice on the form, yet subsequently, they put him in court and convicted him and sent him to prison.

Should this financial disclosure form, in your opinion, be subject to criminal penalties?

Mr. **Pike**. My answer would be, yes. But I would also say that here is how you can get out of the divisiveness that you have created in Congress. Congress is not going to enforce the criminal penalty. Let the Department of Justice do that.

Stop Congressmen from chewing each other up. That is what is tearing the institution apart as I see it.

Mr. **Whalen**. I would agree.

Mr. **Fazio**. I would like to thank the entire panel of our former colleagues and current friends for spending some time with us today. It has been very provocative and I think it gives the committee a good feel for how difficult it is going to be to satisfy the concerns of still one more wave of ethics hysteria.

I do think the committee is in a position to make some improvements. We can tinker with the law, and with your input as we move along, I think we will have much more likelihood of success.

Thank you all very much. We are adjourned.

[Whereupon, at 12:03 p.m., the task force was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Statement of
Hon. Charles E. Bennett
Before the Bipartisan Task Force on Ethics
U.S. House of Representatives
May 3, 1989

I would like to thank the Cochairs and all the members of this panel for this opportunity, and for what each one of you is doing.

My main thrust today is to sound the alarm about a fairly recent problem that is now out of hand. That is the problem of member-to-member contributions influencing in-house elections for committee chairmanships and leadership positions. Such contributions are probably legal and permissable under the rules of Congress. But such contributions cast a serious cloud over the U.S. Congress.

If these contributions are deciding races, then they are clearly wrong. If these contributions don't really make a difference, then why are they given? Some donors say that they want to help their colleagues to be elected, but they could do that by contributing the money to the congressional campaign committees. Passing money member to member appears to be nothing more than vote buying. Were it done in ordinary federal, state or local elections, it would be criminal.

So I have introduced legislation to end this practice in Congress. This bill, H.R. 83, would do the following things:

(1) Prohibit any Senator or Representative, or candidate for such office, from contributing to other members of and candidates for Congress. This would include contributions to or from members' PAC's or personal funds, and cover direct and indirect contributions, including those that are earmarked.

(2) Prohibit members from soliciting or accepting contributions with respect to elections for congressional leadership offices. These offices would include the leadership of both the House and Senate, committee and subcommittee chairmanships and any other officer of a political party.

How bad is this problem? Contributions from members to each other or to other congressional candidates are clearly out of hand, according to an investigation of FEC records by Common Cause magazine.

In the 1981-82 campaign cycle, this kind of contribution totalled $1.91 million. In the 1983-84 cycle, it was $3.43 million. In the 1985-86 cycle, it increased to $5.06 million. As of June 1988, such contributions for the 1987-88 cycle already totalled $2.03 million, with large amount of last-minute contributions then yet to come. In the 1985-86 cycle, a total of 228 representatives and 49 senators made such contributions.

These kinds of contributions are condoned as party-building. Well, I believe in my party and the two-party system. I think that it is noble to campaign for our compatriots. But it isn't noble to distribute monies if it damages the institution and the integrity of Congress -- which it does.

More and more, such contributions are intended to influence elections within Congress for positions of leadership. As you know, I have direct experience with this. I was the candidate for the chairmanship of the Armed Services Committee who had seniority, which would have elected me. But during the 1985-86 campaign cycle, according to Common Cause, Representative Les Aspin gave incumbents and challengers more than $60,000 from his campaign chest, and Representative Marvin Leath gave $75,000. I spoke in the Caucus about this, but did not introduce legislation until Representative Bill Gray reportedly held a fundraiser to raise money to distribute in a way supportive of his Caucus campaign.

Contributions in the recent three-way race for House Democratic Caucus Chair were analyzed in a column by Jack Anderson printed November 30, 1988. According to Anderson, Representative Gray contributed $119,750 to 90 members of Congress during 1987-88. Representative Mary Rose Oakar made contributions during the same period totaling $7,700. The third candidate, Representative Mike Synar, made no such contributions.

The list goes on. Common Cause also found that during the recent battle for Senate Majority Leader, Senator J. Bennett Johnston and Senator Daniel Inouye started PAC's, and that as of June of 1988, Senator Johnston's PAC had contributed $70,000, and Senator Inouye had given $111,000. Much of this was to Senate candidates.

According to Common Cause, during his 1985-86 race for House Democratic Whip, Representative Tony Coelho gave $551,000 from his PAC to 233 fellow Democrats. His opponent, Representative Charles Rangel, gave $219,000 from his PAC, and $44,000 from his campaign chest.

I must emphasize that I do not mean to imply that any of these individuals are undeserving of leadership posts within Congress. In fact, many of these persons are able to raise money precisely because they have other great qualities. But the combined effect is to further lower the prestige and ethical level of Congress at a time when both are in question. This is particularly dangerous when corporations which have interests in legislation are the principal ultimate donors through their PAC's.

Another ethical problem that might become worse is that some contributors who give money to their favorite Senator or Representative regret where their money ends up -- sometimes in the hands of members whose views differ greatly from those of the original recipients and donors.

The legislation I introduced, H.R. 83, would be a big step toward ending all of these problems and preserving the reputation of Congress.

Roll Call newspaper said July 10, 1988 that Congress should pass this bill. The paper said:

> " . . . the idea that a race as important as the one for Senate Democratic Leader or chair of the Democratic Caucus being decided (even marginally) by donations to Members (i.e. voters) is repugnant."

I agree. Thank you.

10th District, California

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Judiciary

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Subcommittee on
Civil and
Constitutional Rights

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April 17, 1989

Honorable Vic Fazio
2113 Rayburn House Office Building

Dear Vic:

As part of your assignment as Chairman of the Bipartisan Ethics Task Force, I understand you will be looking at House procedures for handling ethics matters.

I wanted to call to your attention the work done on this issue in 1979 by a special Democratic Caucus task force. The task force, which I chaired, was asked to study the need for improving House procedures for disciplining Members. Other currently-serving Members who were on the task force were Charles Rose, Dan Glickman and Pat Schroeder.

We studied the historic precedents for handling cases of misconduct, conducted a public hearing to receive testimony from people who have worked closely with House ethics procedures, and solicited comments from a wide range of House Members. From this examination, we concluded that while, in general the Ethics Committee was functioning well, certain changes in House rules would enable a greater measure of due process to be afforded those charged with misconduct.

The task force recommended four changes to the House rules on ethics procedures. These changes were discussed by the Caucus in its organizing meeting for the 97th Congress, and a hearing was held by the Rules Committee early in 1981, but no further action was taken.

I believe our recommendations were sound, and would improve our House procedures. As you continue your evaluation of ethics matters, I hope you will take these proposals into consideration.

Our first recommendation was to divide the Ethics Committee into two separate subcommittees -- one to investigate allegations of wrongdoing and to serve as a prosecutor, and the other to serve as judge and jury to hear charges brought by the investigative panel. Every Member the task force consulted, and every lawyer who represented a Member in a disciplinary proceeding, felt this change was essential.

Honorable Vic Fazio
Page 2
April 17, 1989

The second recommendation of the task force was to institute a quorum requirement of all Members hearing an ethics case. Our proposed rule would require all Members of the adjudications subcommittee to be present during the trial portion of any disciplinary case.

The task force recommended institution of a statute of limitations. While the task force felt it proper to reach back beyond a Member's current term of office to investigate alleged misdeeds, we felt the need for some reasonable limitation. Our proposed rule would have provided for House ethics procedures the same rule now applied in federal criminal cases -- a five year statute of limitations.

The above three recommendations were adopted unanimously by the task force. A fourth recommendation, adopted with one dissent, called for Members accused of wrongdoing to have the right to counsel on the floor of the House during House debate on ethics proceedings. A majority of the task force members, and many of the witnesses who provided testimony, felt that denial of legal counsel during such proceedings has the effect of denying the Member of an effective defense.

Enclosed is a copy of the resolution I introduced in 1981 which embodies the recommendations of the task force, as well as a copy of our report to the Caucus. If you would like to review any of the background materials the task force compiled, I would be happy to make them available to you.

I hope these materials will be of some use in your work.

With kindest regards.

Sincerely,

Don

Don Edwards
Member of Congress

DE:rh

Statement of Richardson Preyer
To House Bi-Partisan Commission on Ethics

As a former member of Congress, I understand the feelings of many congressmen about a Code of Ethics.

There is resentment that it is another reflection of disrespect for politicians, part of the continued acid rain of criticism. Most congressmen are proud of their standards. I remember Congressman Joe Wagoner saying, "He would rather lose his wallet on the floor of the House of Representatives than anywhere else in the world." Moreover, legislators come to Congress for power, excitement and the opportunity to make a contribution to public policy, not to get rich. Acts such as putting a mistress on the payroll are shocking exceptions; such actions, they argue, are far less common in government than private life.

Yet most legislators agree that it is appropriate that they be held to a higher standard—the trustee standard, one who acts for others and not in one's private interests—though not to an unrealistically high ideal. The standard must involve an understanding of the nature of representation: the conflicts, the trade-offs, the bargaining process by which legislation is passed and the constituent represented, a process that blurs value conflicts to facilitate accommodation. There is necessarily much mediating with interest groups for a congressman to be effective. Yet self-interest must be limited. Where do you draw the line? The present code draws it at the point of "conflict of interest"—to ensure that the congressman makes decisions with the public interest in mind, not his or her private interests.

I think the present code is basically sound and has done a pretty good job in balancing the various interests—the rights of privacy against the public's right to know, and setting standards and guidelines without chilling the political process. The code is not political Comstockery, not a Cromwellian orgy of purification. It is not to punish but to make the system work better. It is not, strictly speaking, a "Code of Ethics" but is more accurately a "Code of Conduct," primarily financial conduct. It doesn't deal with legislators' morals or values. It doesn't tell them they should pursue the national interest over the local interest, for example. It discloses only those things affecting legislative performance. It provides peer review. At the minimum, it is damage control against those few who overreach. As Barber Conable said in The New Yorker, "When Wilbur Mills or Wayne Hays misbehaves, the public cry goes up that he's only doing what everyone does. That being the case, we have to justify ourselves with a Code of Ethics. We have to say what the standards are."

I am not in favor of deregulating ethics and eliminating the code, but I favor adjusting it—some tightening and loosening to make it more workable and understandable. Since its purpose is to restrict behavior, it should be as simple as possible so that legislators are not turned into accountants.

Some comments on adjustments:

Financial Disclosure Requirements

are essential not only to disclose possible conflicts of interest but also for the self-regulatory feature of the code—by making the facts available to the voter, the press and public interest groups, and opposing candidates. Other forms of regulating conflicts of interest—divestiture, blind trusts, or disqualifications—might be appropriate for the executive branch but not for a representative body. We must rely on financial disclosure; it is the linchpin of the Code of Ethics.

I think the present provisions strike a proper balance between the public's right to know and the right to privacy. Categories of value should be maintained; there should be no requirement to release income tax returns. Hopefully the reporting forms can be simplified and made clearer—though the example of the IRS is not encouraging.

Spouse Disclosures

Dual incomes have become more common among legislators and their spouses because of the salary problem as well as changes in social attitudes. Should spouse disclosure provisions be modified because of this development?

Did the spouse get the job on the merits or because of the relationship with the legislator? Was business thrown to the spouse by a client seeking influence? It would be a mistake to put any provisions in the code concerning such questions. It would put an unworkable burden of proof on the legislator and be an invasion of the spouse's privacy. Financial disclosure must be relied on as a self-enforcing mechanism against abuses arising from the spousal relationship. The present provisions are complicated and confusing. Their effect seems to be to require disclosure of everything, with the possible exception of a spouse who has a life estate under a will with the remainder going to the spouse's children. It may be simpler to say so and require the disclosure of the source of all spouse income (but not the amounts—and not the listing of clients or customers) and eliminate the refinements of the present rule. This is a restriction on spousal freedom, unfortunately, but it is an additional burden assumed when you marry a legislator. Lack of disclosure leaves too tempting a loophole—legislators could conceal their assets by placing title in the spouse's name. And it seems evident that the legislator can act to enhance the interests of the spouse even if the legislator exercises no control over such interest.

Honoraria and Outside Earned Income

Honoraria under the code were limited by the $2000 restriction per speech and the 15% (now 30%) of salary limit on outside earned income. As I recall our deliberations on the Select Committee on Ethics, we thought it was in the public interest for congressmen to speak to groups relative to the actions of Congress, for a member of the Health Sub-committee to address the AMA on health legislation, for example, or a member of the Commerce Committee to address the automobile manufacturers on the Clean Air Act proposals or to address a "Good Government" group out of his district. And for a member to speak out of his district and take time from his weekend, and to help justify it to his wife and family, honorarium—as long as it was not something like $10,000 from the American Coin Machine Operators—was an important incentive to make such speeches. We were naive and never envisioned it as a supplement to income of congressmen with money from special interests with legislation before Congress, often for brief and not very substantive talks or appearances. I don't think we every imagined that members of Congress would receive nearly $10 million in honoraria in 1987.

The honoraria system is now badly discredited. There can be no question that public officials should be paid by the public, not by private interests. But I still think our original justification has merit. Perhaps a statutory ban on all honoraria is the only answer—but a draconian answer to put into effect overnight, especially in view of the defeat of the badly needed pay raise for Congress. Eliminating honoraria would have considerable tactical value as a quid pro quo in the next effort to raise the pay of congressmen. In short, I have considerable sympathy for President's Bush's pledge to work with Congress to solve this problem—or problems. I would urge that outside earned income be again limited to 15% of salary as a part of the solution to both problems—honoraria and a Congressional pay raise.

I am not wise enough to solve this problem of honoraria-pay raises. But some sort of sliding scale arrangement (giving up a percentage of honoraria for a percentage of salary increase over a period of a few years) would be fair.

Outside earned income should continue to be disclosed in specific amounts, rather than changed to reporting by categories of value, because of the special dangers of conflict of interest it involves.

Gifts

The present provision now seems to me to be too refined and leaves too large a grey area for interpretation. The "direct interest in legislation" is too subjective and puts a troublesome burden of proof and judgment on the legislator.

A blanket top limit on gifts (of, say, $200 or $250) will cover gifts in the nature of peanuts in the outer office, banquets and dinners. A provision for a waiver granted by the Committee for exceptional cases would give flexibility. The Senate provision to prohibit all gifts from lobbyists and PACs would please the latter groups and the public but would seem to lead to interpretive complications rather than simplify the code. If it works in the Senate, I would be for it.

Personal hospitality can be a problem. The simplest answer, though unfortunately burdensome, is to require a waiver from the Committee. Experience from advisory opinions on the waivers might allow the formulation of some guidelines for the future.

Process

Questions of due process are raised where the Standards Committee acts as grand jury, judge and jury. Some bifurcations of functions is in order.

A Special Commission or Office to review complaints and refer them to the House or Senate Standards Committee if probable cause is found is a way out. Its composition should include a majority of former congressmen, with perhaps a retired judge and an ethicist from the academic world. Such a commission or office ideally could take on the function of issuing advisory opinions and waivers; members may be reluctant to go to the Standards Committee for such opinions and waivers for fear of going to the police.

Compliance and Enforcement

Lee Hamilton and I, in "Additional Views" filed in the Report by the Committee on Standards of Official Conduct on Korean Influence Investigation argued, along with suggestions for more flexible remedies, that code enforcement should be conducted by the institution itself. We did offer the possibility that if it proved unworkable, then an Independent Commission should be considered. I withdraw the caveat. The Standards Committee has clearly proved itself. As David Broder wrote recently, after reviewing the actions of the Committee for the past 10 years, the "House has done a far better job of dealing with its bad actors than the White House and the executive branch have done in cleaning up their breaches of conduct." There is no need for an Independent Commission and many good reasons not to have one.

Should there be some kind of independent audit and review to verify the completeness and accuracy of the reported information, random audits, for example? H. L. Menken once said something about every problem having an answer that is logical, obvious, reasonable—and wrong. This is the case here. The problem is that practically every audit is qualified or conditional in some way, which might be interpreted as an effort by the reporting individual to withhold information. The very fact of being selected for an audit would allow for political victimization. One can envision the negative TV ads. The civil and criminal penalties in the code for failing to file or falsifying a report are sufficient to guarantee effective self-enforcement. A congressman would be a fool to file a false report.

HEARING ON THE ADMINISTRATION'S ETHICS PROPOSALS AND CONGRESSIONAL STANDARDS OF CONDUCT

WEDNESDAY, MAY 24, 1989

U.S. HOUSE OF REPRESENTATIVES,
BIPARTISAN TASK FORCE ON ETHICS,
Washington, DC.

The task force met, pursuant to call, at 9 a.m., in room 2359, Rayburn House Office Building, Hon. Vic Fazio (chairman of the task force) presiding.

Members present: Representatives Fazio, Obey, Stokes, Martin, Gillmor, Livingston, and Sundquist.

The CHAIRMAN. I would like to convene the hearing of the Bipartisan Task Force on Ethics. I know our colleagues will be joining us as we move along, but when I have Dave Obey of the Obey Commission with me, I know I am sufficiently surrounded by expertise on this subject to begin. So let me make an opening statement and then we will go to our first panel.

Today's hearing of the Bipartisan Task Force on Ethics is the second in a series of public hearings on congressional ethics rules and standards of conduct. The task force has undertaken these hearings in connection with its review of all ethics rules and regulations that govern the conduct of Members of Congress. We have been directed to undertake a comprehensive review of the House Code of Conduct, including its implementation and enforcement, and to report our recommendations to the House.

The members of the task force do not take this responsibility lightly. We recognize the critical importance of maintaining the highest ethical standards among all government officials. It is our hope that our final recommendations to strengthen and clarify the ethics code will both enhance Members' understanding and compliance with the rules and increase public respect for the integrity of the institution.

At our first hearing earlier this month, we had a very useful and informative discussion with several of our colleagues who had previously served on the Ethics Committee, and with several former Members of the House. Their comments reflected wide divergence of opinion on a number of complex questions concerning standards of conduct.

How specific or how abstract should an ethics code be?

Would more complete financial disclosure substitute for specific prohibitions on certain activities?

What are the strengths and weaknesses of the code?

Does it place too much emphasis on financial matters?

Should the rules speak to appearances of impropriety, or only to demonstrable conflicts of interest?

And most importantly, what ethical standards will enhance public confidence in the integrity of Members and the institution?

There are no easy answers to these and many other questions related to congressional ethics that we will address during the course of these hearings and other meetings of the task force. But we hope to begin to find some of the answers this morning.

Among the specific rules and statutes we will examine are the financial disclosure law, restrictions on honoraria and outside income, conflict of interest prohibitions, rules on acceptance of gifts and travel expenses, use of official resources, and enforcement of the rules and the role of the Ethics Committee.

Many of these subjects were addressed in the recommendations of the Wilkey and Volcker Commissions, and are included in some form in the President's ethics legislation.

It is for that reason that we have invited witnesses this morning to discuss the President's proposed government-wide ethics bill, and the recommendations of both the Commission on Federal Ethics Law Reform, chaired by Judge Malcolm Wilkey, and the National Commission on the Public Service, chaired by Paul Volcker, former chairman of the Federal Reserve Board.

Our first panel of witnesses include former Senator Charles Mathias, a member of the Volcker Commission; Lloyd N. Cutler, member of the Wilkey Commission; Ms. Nancy M. Neuman, member of Volcker Commission and President of the League of Women Voters; and Mr. Edward Dennis, Assistant Attorney General in the Justice Department.

This authoritative panel will discuss the President's ethics package, and those recommendations of the Wilkey and Volcker Commissions that relate to congressional standards of conduct.

I would like to welcome all of you and particularly thank you for spending your time with this branch of government. We are always indebted to those of you who take time away from your busy schedules to spend time with us. Perhaps we could, unlike the House on many occasions, respect the other body by going to Senator Mac Mathias of Maryland, who is a highly respected man, and allow you to begin, Mac.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., FORMER U.S. SENATOR FROM MARYLAND, AND MEMBER OF THE VOLCKER COMMISSION

Mr. **Mathias**. Thank you very much, Mr. Chairman.

I will be very brief. Nancy Neuman is going to review the specific recommendations of the Volcker Commission as they refer to ethics standards. Let me just make a few remarks that will really go beyond the parameters of the commissions.

Let me start with a confession. I don't appear before this committee on any kind of position of moral elevation. I have accepted honoraria. I have been out and scrambled for campaign funds. I know the problem from a very personal point of view. But I have come to some conclusions this time.

I think you have to view the ethics picture a little as we did back in world War II when we tried to learn how to identify aircraft. There were two methods. One was wings, tails, and fuselage, where you looked at individual parts of the plane, and the other was total perception. I think as you look at this ethics question you have to look at it as a question of total perception. I had for many years been of the opinion that disclosure was enough. If you just disclosed the facts then voters could make a decision, if you could get the whole picture on the record.

I don't believe any longer that is an adequate solution to the problem. Total disclosure is simply not an effective way of dealing with the complex ethical problems of the Congress.

You mentioned honoraria, Mr. Chairman. It seems to me the time has come to terminate the practice of honoraria. It has become a pernicious practice. It is abused. In its original form, the concept was that a Member of Congress of either House would write a speech, travel some distance to deliver it, take time from his personal life, take time from his own private activities, and that it was fair that he or she should be compensated for that.

But we have gone well beyond that. We know that the practical aspect of it is congressional staffs prepare many of the remarks. Speeches are not involved in some cases. The rules permit, in some circumstances, compensation for appearances, not for any real intellectual consideration at a meeting, but simply for physically being present for a brief time. That is awfully close to simply accepting a gratuity.

So I think the practice of honoraria has to be suspended. Entertainment, travel, those kinds of fringe benefits, I think have to be controlled. I don't think simple disclosure is adequate to respond to the public perception that something is wrong and lavish entertainment is provided, weekend travel, the kind of thing which has been rampant on occasion.

But all of that, Mr. Chairman, is only part of the larger picture of campaign finance. I think it is very difficult for the public to make a clear distinction between accepting a thousand dollar honoraria and a thousand dollar campaign contribution. There is a difference obviously. I am not suggesting that there isn't. I am talking about the public perception.

Campaigns have gotten enormously expensive. The total cost of campaigns in 1964 was $180 million. By 1984 it was $1.8 billion, a tenfold increase. If you factor in inflation, it comes down to about a fourfold increase, but still, the quadrupling of election monies. There is a lot of money sloshing around in the system.

I honestly believe that a look at congressional ethics has to look at the cost of campaigns, has to look at the total amount of money which is being solicited and accepted by the Members of Congress, and consider the possibility of some alternative methods of financing elections, which doesn't involve the handling of as much cash by campaigns as is presently the case.

So that is to say, Mr. Chairman, that I think you have to look at the total perception, not simply honoraria, travel, entertainment, but look at campaign financing as well, and, of course, that means you have to look at salaries, because that becomes part of the total equation.

That sets it up for my friend, Mr. Cutler, to take over.

Thank you very much.

The CHAIRMAN. Senator, you served on both the Quadrennial Commission, chaired by Mr. Cutler and the Volcker Commission. Perhaps we can get back to the issue of salaries after we hear from the rest of the panel.

Let me go at this point to Ed Dennis, Assistant Attorney General for the Criminal Division of the Department of Justice.

I believe, Ed, you are going to be explaining to us President Bush's proposal?

STATEMENT OF EDWARD DENNIS, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. DENNIS. Yes, Mr. Chairman.

I would like to thank you for the opportunity to address this Bipartisan Task Force on Ethics. The President's legislation is entitled "Government-Wide Ethics Act of 1989." I think the key word in that title is government-wide, because if there is a theme that runs through this legislation, it would be the fact that it seeks to have a level playing field insofar as the ethical standards that are applied to the Executive and the Legislative Branches of Government, that those restrictions which apply to the Executive Branch should also apply to the Legislative Branch.

More specifically, the legislation would amend section 207 and 208 of title 18, which deal with post-employment restrictions of government officials and conflicts of interest that might arise concerning the activities of those who are currently in government. Those sections, as you may be aware, do make distinctions between certain types of matters that might be the subject of post-employment restrictions, and depending upon how close the relationship is between the official and the matter, the restrictions are more onerous.

For example, under current section 207, there are restrictions that would be a lifetime bar for government officials who participated personally and substantially in a particular matter, and if that matter were a little further removed from their actual conduct as a government official—in this case the language relates to matters actually pending under the former official's responsibility—the bar is two years before that official would be allowed to then engage in any activity with his former agency on that situation.

These restrictions would also be extended to Members of Congress as they currently apply to the Executive Branch of the Government.

In addition, the section 208 of title 18 deals with conflicts of interest and under the Administration's section 208 it would extend the full coverage of section 208 to all officers and employees of the Legislative Branch except Members of Congress, and it would extend restrictions relating to arrangements concerning employment of Members of Congress except as to matters covered by Article I, section 6, clause 1 of the Constitution.

It also restricts representational activities by general partners of current Members of Congress and government employees of all three Branches.

In addition, the legislation calls for the application of the independent counsel statute to Members of Congress. As you know, this statute has been somewhat controversial in terms of the procedures under which prosecutorial decisions are made and the public way in which accusations that have not actually reached the stage of being criminal charges are, just by the nature of the procedures, made public in the appointment of an independent counsel.

We are not here really to debate the merits of the independent counsel statute, but I think that it is clear that the same provisions that apply to the Executive Branch should apply to the Legislative Branch and that that is the thrust of the President's legislation on that.

Finally, there is a new provision which would be new for both the Executive Branch and the Legislative Branch which would be a subsection of section 207, which would create a two year bar with the use of or disclosure of certain government proprietary information, which would be defined specifically in the legislation.

This would be new. It does relate to the problems that have arisen in the case that is currently being prosecuted, known as the "ill winds prosecution."

[The statement of Mr. Dennis follows:]

Department of Justice

STATEMENT

OF

EDWARD S.G. DENNIS, JR.
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

BIPARTISAN TASK FORCE ON ETHICS
HOUSE OF REPRESENTATIVES

CONCERNING

THE "GOVERNMENT-WIDE ETHICS ACT OF 1989"

ON

MAY 24, 1989

Mr. Chairman and Members of the Task Force, I am pleased to be here today to discuss the President's proposed ethics legislation, the "Government-Wide Ethics Act of 1989." As you know, the bill was sent to the Congress by President Bush on April 12, 1989 and has been introduced in the Senate and the House of Representatives as S. 765 and H.R. 2337, respectively. It is based in a large part on the recommendations of the President's Commission on Federal Ethics Reform which issued its report in March, 1989. A stated purpose of the legislation is to insure a "level playing field" for all branches of government.

While there are, of course, important differences among the executive, legislative, and judicial branches of the government, we believe that so far as possible, ethics legislation, including conflicts of interest restrictions, should apply evenly across all three branches. The President's Ethics Commission adopted this philo- sophy throughout its report.

You have requested that the Department of Justice address those provisions of the legislation that directly affect the Congress. Insofar as it would directly affect Congress, the legislation would significantly amend the criminal conflicts of interest statutes, which are set out in Chapter 11 of Title 18 of the United States Code.[1] The Chapter contains detailed restrictions on the activities of current and former government officers and employees. The legislation generally amends these statutes by providing for a more diverse arsenal of enforcement actions. Most notably, the proposed legislation extends to members of the legislative branch restrictions, now applicable only to the executive branch, embodied in Sections 207 and 208 of Title 18. (The legislation also modifies these restrictions as they relate to the executive branch). The bill also expands coverage of the Independent Counsel statute to cover allegations against Members of Congress and makes other changes to noncriminal provisions of federal law relating to ethics.

I. Conflicts of Interest Criminal Statutes

Currently, the conflicts of interest criminal statutes are codified in Sections 203 through 209 of Title 18, United States Code. Members of Congress are subject to the restrictions of only Sections 203 and 204. Officers and employees of the legislative branch are subject to the restrictions of Sections 203 and 205. Sections 207, 208, and 209 apply only to officers and employees of the executive branch.[2]

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[1] The relevant sections of Title 18, United States Code, are Sections 203, 204, 205, 207, 208, and 209; the President's bill amends these sections in the following sections, respectively: Sections 301, 110, 111, 201, 104, and 112.

Generally, the proposed modifications to Sections 203, 204, and 205, are not substantive. The President's legislation would add civil and injunctive remedies to existing criminal felony sanctions and would provide for alternative misdemeanor criminal sanctions; the legislation would likewise modify the sanctions available for violations of Sections 207, 208, and 209.[3]

The proposed legislation completely revises Sections 207 and 208 to extend certain restrictions to Members of Congress and officers and employees of the legislative branch. In reviewing the proposed changes to Sections 207 and 208, it is important to recognize the proposed bifurcated definition of legislative branch, discussed below, set forth in the President's bill; the legislation recognizes that some components of the legislative branch such as the General Accounting Office and Library of Congress are engaged in non-legislative functions. Generally, officers and employees of these components have responsibilities closely analogous to those of executive branch personnel.

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[2] 18 U.S.C. § 206 contains no criminal proscription; it provides an exemption from the coverage of Sections 203 and 205 for certain retired officers of the uniformed services of the United States.

[3] 18 U.S.C. § 209 relates to unlawful supplementation of the salary of an officer or employee of the executive branch. The legislative branch is not affected by the current statute and the President's legislation does not expand the coverage of the statute to the legislative branch. The bill does, however, expand coverage to the judicial branch.

A. General Modifications to Criminal Statutes

As noted, the bill makes various minor and technical amendments. Notably, the legislation provides for definitions relating to the persons covered by relevant restrictions. Significant general changes relate to sanctions and are discussed below. We believe that the availability of these more flexible sanctions will enable the Department of Justice to more effectively enforce these statutes.

1. Definitions

The proposed bill provides a specific definition of "Member of Congress" for purposes of Sections 204, 207 and 208. This Section of the President's bill, Section 113, also defines the term "legislative branch." As noted, the definition of "legislative branch" allows for a distinction between officers and employees who are engaged in legislative functions and those who are not. The terms are defined in proposed amendments to Section 202 of Title 18; the new subsections provide as follows:[4]

> (d) The term 'Member of Congress' in sections 204, 207, and 208 shall include:
>
> (1) a United States Senator;
>
> (2) a member of the United States House of Representatives;
>
> (3) a Delegate to the United States Congress; and

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[4] Similar terms relating to the executive branch and judicial branch are also defined.

(4) a Resident Commissioner to the United States Congress.

* * *

(h) 'legislative branch' means

(1) a Member of the United States Senate or the United States House of Representatives, or any officer or employee of the United States Senate or United States House of Representatives, other than those specified in subparagraph [2]; and

(2) an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity or office in the legislative branch, other than those listed in subsection [1].

2. Criminal Penalties

The bill amends Sections 203, 205, 207, 208 and 209 of Title 18 to authorize misdemeanor and felony sanctions. Currently, with the exception of Section 209 and subsection 207(g) which provide for only misdemeanor penalties, any violation of these Sections is a felony.[5] The bill authorizes misdemeanor sanctions for "knowing" violations. Currently, "knowing" intent is the standard for all violations. Also, the bill adds a felony sanction for violation of Section 209 and Section 207(g) (which has been relocated to Section 208 by the President's bill). Felony sanctions are retained for "willful" conduct; the maximum term of imprisonment for a felony violation would be increased from two years to five years.

3. Civil Penalties

The President's bill also provides for civil sanctions for violations. These sanctions are unavailable under current law. The respective civil fine provisions provide for fines of the greater of $50,000 or the amount of compensation received, if any. Civil penalties are a particularly useful supplement to criminal fine authority because the standard of proof in a civil action, preponderance of the evidence, is easier to meet than the standard in a criminal case, proving guilt beyond a reasonable doubt. The civil penalty is in addition to any criminal penalty.

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[5] 18 U.S.C. § 3571 provides that the criminal fine for a felony committed by an individual is the greatest of the amount stated in the offense, double the defendant's gain, or $250,000. Section 3571 also provides that the maximum fine for the type of misdemeanor set out in §§ 207(g) and 209 in current law and the misdemeanors which would be created by the Administration's bill is the greatest of the amount set out in the offense, double the defendant's gain, or $100,000.

4. Injunctive Relief

Currently, injunctive relief is not expressly available for any of the conflicts of interest provisions. The President's bill adds a new Section 216 to Title 18. The Section, in accordance with the Commission's recommendations, authorizes the Attorney General to seek an injunction against a person who is engaged, or is about to engage, in conduct which violations Sections 203, 205, 207, 208 or 209 of Title 18. Section 302 of the President's bill provides for this relief.

B. Section 207 of Title 18

Section 207 of Title 18 generally creates prohibitions against representational activities of former executive branch officers and employees. Increasing the scope of existing restrictions to include the legislative branch would go a long way toward eliminating perceptions of a revolving door problem which both impairs public confidence in government and reduces morale of government employees.[6]

1. Current Law

As background for my discussion of the proposed legislation, relating to Section 207, I would like to outline briefly the relevant provisions in the current law. Section 207 has four subsections which provide for felony sanctions on conviction. They are subsections 207(a), 207(b)(i), 207(b)(ii), and 207(c).[7] Subsections 207(a) and 207(b)(i) both cover all former officers and employees of the executive branch, independent agencies, and the District of Columbia, except such officers and employees who left government employment before July 1, 1979.[8] Subsections 207(b)(ii) and 207(c) cover, with minor exceptions, persons who occupied positions described in subsection 207(d).[9] These persons are generally those with high level jobs involving significant decision-making or supervisory responsibility.

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[6] The President's proposed legislation also addresses a multitude of post-employment restrictions which have been added through the years both to Title 18 and to other titles of the United States Code. Consistent with recommendations of the President's Commission, it consolidates these restrictions in a single vehicle and simplifies what has become an exceedingly complex body of law. I note that none of these other provisions relate to the legislative branch.

Subsection 207(a) now prohibits all former executive branch employees from representing anyone other than the United States in certain federal forums or before certain federal officials in connection with a particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and in which the person participated personally and substantially as an official. This prohibition is permanent.

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[7] Subsection 207(j) establishes a basis for administrative disciplinary action in cases where the head of the department or agency in which the former officer or employee served determines that the former officer or employee violated one of the four felony provisions.

[8] Those officers and employees who left federal employment prior to July 1, 1979, remain subject to an earlier version of 18 U.S.C. 207(a).

[9] These subsections do not cover persons who left government employment before July 1, 1979, or, in the case of such persons who occupied designated positions, prior to the effective date of such designation.

Subsection 207(b)(i) prohibits all former executive branch employees from representing anyone other than the United States in certain federal forums or before certain federal officials in connection with a particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and which matter was actually pending under the former official's responsibility within one year prior to the termination of such responsibility. The prohibition is limited to a period of two years following a former official's employment or, in the case where the former official's responsibilities changed before he or she left government service, the two years following the change.

Subsection 207(b)(ii) bars former high level executive branch officials subject to its terms from representing, counseling, advising, consulting, or assisting in representing anyone except the United States by "personal presence at any formal or informal appearance" before certain federal forums or officials, in connection with particular matters involving a specific party or parties in which they participated personally and substantially as government officials. The bar is in effect for two years after the cessation of their government service.[10]

Subsection 207(c) has a somewhat wider sweep than the other subsections in that it embraces matters which do not involve particular parties as well as matters which arise after the former official has left government service. In general, the subsection prohibits former high level officials from representing anyone other than the United States before the agency where the person served in connection with any particular matter which is pending before such agency or in which the agency has a direct and substantial interest. This prohibition, frequently referred to as a "cooling off period", is for one year after the official has left government service.

2. The Administration's Bill

I would like to set out the President's bill in somewhat abbreviated form. The President's bill makes three significant changes relating to the legislative branch. First, the bill extends to officers and employees of non-legislating components of the legislative branch, as defined in proposed Section 202(h)(2), the basic provisions of Sections 207(a) and (b). Second, the bill extends to Members, high ranking staff, and high ranking officers and employees of non-legislating components of the legislative branch, the provisions of the one-year cooling off restrictions of

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[10] 18 U.S.C. 207(b)(ii) has little practical meaning because it is almost completely subsumed by subsections (a) and (c).

Section 207(c). Third, the bill adds new provisions relating to the improper disclosure of certain information; the current conflicts of interest statutes do not reach behind the scenes, and are concerned solely with representational acts.[11]

The President's legislation revises present 207(a) while retaining its basic prohibition: a lifetime bar on a former employee of the executive branch "switching sides" and representing anyone other than the United States in connection with a matter involving a particular party or parties in which the employee personally and substantially participated while in government service. The Administration's bill extends this coverage to parts of the legislative branch not involved in legislating such as the Library of Congress and the Congressional Budget Office.[12] The legislation revises and clarifies present 207(b)(i) which prohibits former executive branch employees from representing another person in connection with a particular matter involving a particular party which had been under the former employee's official responsibility during his government employment. This Section is also extended to non-legislating components of the legislative branch.

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[11] A provision relating to administrative debarment under which the head of an agency may bar a person who has been found to violate a provision of Section 207 from appearing before or contacting that agency for up to five years is also included. A similar provision is in current Section 207(j). The bill expands current law in that it allows any agency to which a representation is made to debar the person. Current law allows only the head of the agency for which the former employee worked to take this action. Also, the bill provides for subpoena authority for agency enforcement of this provision.

[12] As noted, Section 201 of the President's legislation amends Section 207. We anticipate a technical amendment to the proposed amended Section 207(a); the reference therein to "section 207(h)" should read "section 207(h)(1)."

The proposed legislation eliminates the provisions of present 207(b)(ii), which are subsumed in other subsections in current law and in the proposed legislation. In this regard, the legislation is consistent with recommendation in the Commission Report that this subsection be eliminated.

The legislation contains provisions which continue the thrust of present 207(c) which provides for a one year "cooling off" period during which high level executive branch officials may not contact their former agency. The bill extends the one-year "cooling off" period now in Section 207(c), to Members of Congress, high level staff members and high level officials in non-legislating components of the legislative branch.[13] For Members and senior congressional employees, the bill would ban contacting all Members, offices, and employees of Congress. Former high level employees of non-legislating components are barred only from the component in which such person served.

To be truly effective, any effort to regulate post-employment activities must account for both the exchange of information and the protection of certain types of information. There should of course, be some nexus between the specific information released and a particular harm to the government. The Administration's bill, consistent with Recommendation 11 in the Commission Report, provides for a two-year bar on the use or disclosure by all former executive and legislative branch personnel of specifically defined, non-public information including, for example, source selection information and information concerning a trade negotiation position of the United States. The restriction appears in proposed Section 207(d). A violation requires that the former official have known that the information was protected, that it was specifically designated as protected, and that it had not otherwise been made public.

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[13] The Administration's bill would subject federal judges and employees of the judicial branch to the lifetime bar on the "side switching" provisions of present Section 207(a) and to the "cooling off" period of present Section 207(c).

C. Section 208 of Title 18

Section 208 of Title 18 is designed to promote the integrity of government actions by assuring that they will not be unduly affected by an official's consideration of the official's own financial interest in the matter or those of persons or entities who, because of their close relationship with the official, might influence the officials actions.

1. Current Law

Current Section 208(a) bars officers and employees of the executive branch from personally and substantially participating as an official in a matter in which the official has a financial interest. In addition, it bars such participation even where the official has no financial interest in the matter but certain other persons or entities, to the official's knowledge, have such a financial interest attributable to the official. These persons and entities are: the official's spouse, minor child, partner, or organization in which he is serving as an officer, director, trustee, partner, or employee. In addition, the official is prohibited from acting where a person or organization with whom he is negotiating concerning employment, or has any arrangement concerning prospective employment, has a financial interest known to him. Section 208(b) provides for procedures whereby a waiver for a de minimus financial interest may be obtained.

2. The Administration's Bill

In accord with recommendations of the Commission, the bill extends coverage of Section 208(a) to all officers and employees of the legislative branch, except Members of Congress, and the judiciary the basic prohibition from taking action on matters in which, to his knowledge, an official has a financial interest, or a financial interest of another person or entity is attributable to him. This is accomplished in proposed Section 208(a)(1).[14]

In addition, again carrying out a Commission recommendation, proposed Section (a)(2) extends restrictions relating to arrangements concerning prospective employment to Members of Congress, as well as to all officers and employees of the legislative branch and to the judiciary; the ban also reaches arrangements concerning current employment. The effect of this provision would be that any Member of Congress who is negotiating for employment with or currently employed by a person or entity would be prohibited from taking official actions (except as to matters covered by Article I, sec. 6, cl. 1 of the Constitution) as a Member in any matter in which the Member knew the person or entity to have a financial interest.

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[14] The Commission concluded that it would be inappropriate to apply Section 208 to Members of Congress as a general matter, because Members participate "personally and substantially" in every matter in which they are called upon to vote.

Proposed Section (a)(3) restricts certain representational activities by general partners of current Members of Congress and government employees of all three branches. A similar provision, that applies only to partners of executive branch employees, now appears in Section 207(g) of Title 18. The proposed partner provision, unlike current law, makes a distinction between limited and general partners; limited partners in widely held investment vehicles, such as those formed for real estate investments, typically have no more common interests than do shareholders in a publicly traded corporation. The Administration bill accordingly limits the partner provision to general partners and also relocates the provision to Section 208 where it more logically belongs.

The bill also amends subsection (b) of Section 208, in accordance with the recommendations of the Commission, to broaden the authority for the issuance of exemptions or waivers from the requirements of section (a). Proposed subsection (b)(2) gives the

Office of Government Ethics the central authority to issue regulations providing for exemptions for interests that are too remote or too inconsequential to affect the integrity of Government officers' or employees' services. At present, only individual agencies have this authority and this can result in a lack of uniformity and inconsistent regulations. Proposed new subsection (b)(4) would also authorize an exemption when the President certifies in writing that the national interest so requires.[15]

Finally, the bill reorganizes Section 208 for clarity by creating some internal definitions for long, repeated terms in the statute. The consolidation of definitions is not intended to create any substantive change to the statutory restrictions.

II. Independent Counsel

Title VI of the Ethics in Government Act, Sections 591 through 599, Title 28, United States Code, provides for the appointment of an Independent Counsel to investigate and, if appropriate, prosecute certain high ranking officials of the executive branch for alleged violations of federal criminal law.[16]

The President's bill extends the independent counsel statute beyond its present coverage to Members of Congress and proposes other changes to the independent counsel procedures. The extension of the independent counsel statute to the Congress was considered by the Commission, which recommended that if the mechanism of an independent counsel is continued, it should apply to the legislative branch as well as the executive branch. Section 482 of the President's bill accomplishes this by amending Section 591 of Title 28.

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[15] All certifications granting a conflict of interest waiver would have to be provided to the Director of the Office of Government Ethics, who would be required to make them available to the public, pursuant to the general procedures for disclosing public financial disclosure reports.

[16] The Independent Counsel procedure does not extend to a Class B or C misdemeanor or an infraction.

III. Miscellaneous Noncriminal Matters

The Administration bill also addresses a number of areas which although not explictly involving criminal statutes, are closely related and would significantly affect the legislative branch.

A. Congressional Ethics Office

The bill would create an independent ethics official with a permanent staff to investigate ethical violations of Members of Congress and congressional staff. The bill establishes a Congressional Ethics Office to administer the financial disclosure system and investigage allegations of misconduct by legislative officials and employees, publicly report its findings to the appropriate congressional ethics committee, and recommend appropriate sanctions. The office would be headed by a Director to be named by a nominating committee and confirmed by a majority vote of both houses of Congress. The creation of a Congressional

Ethics Office was recommended by the Commission as a means of ensuring the independence and vigor of the congressional ethics system. Section 303 of the President's bill creates this office.

B. Campaign Finance Reform

The Administration's bill would significantly amend the law relating to the use of excess campaign contributions. Section 439a of Title 2, United States Code, now permits individuals to use excess campaign contributions in the following ways: (1) any individual who [was] a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on January 8, 1980 "may use such funds for personal use; (2) Federal office-holders may use them to "defray any ordinary and necessary expenses incurred in connection with [one's] duties as a holder of Federal Office;" (3) such funds may be donated to charitable organizations, or (4) such funds may be transferred to the local, state, or national committee of a political party. Senate rules bar current and former Members from using campaign funds for personal purposes.

The proposed amendment would eliminate the personal use of funds donated for campaign purposes. In addition, in order to establish parity with principles applicable to the executive branch, the bill would provide that excess campaign funds may not be used by to augment appropriations for official duties. The proposed amendment is set forth in Section 501 of the Administration's bill.

C. Outside Earned Income

Section 210 of the Ethics in Government Act currently restricts senior employees in the executive branch from receiving, in any calendar year, outside earned income that is in excess of 15 percent of their salary. The Commission recommended the enactment of a uniform percentage cap, to be set by statute, on outside earned income for senior employees in all three branches.

Proposed Section 210 establishes a uniform limit for senior officials in the legislative, executive, and judicial branches. The proposed cap is to be set at 15 percent of the salary level set for level I of the Executive Schedule under Section 5312 of Title 5, United States Code;[17] however, as applied to Members of Congress, income that is earned in the form of honoraria subject to 2 U.S.C. 441i is not counted as earned income.

D. Gifts to Federal Employees

The Administration's bill adds a new Section 7353 to Title 5, United States Code, to prohibit federal employees from accepting gifts from anyone who is seeking official action from an individual or the individual's employing agency, conducting operations or activities that are regulated by the employing agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's official duties, except as specified in regulations to be issued by the Office of Government Ethics setting forth reasonable exceptions. There is currently no statute covering the acceptance of gifts in the circumstances covered by this provision. Currently, rules relating to the acceptance of gifts vary significantly among the three branches. The new section is intended to establish a government-wide prohibition on acceptance of gifts where a conflict of interest or the appearance of a conflict can be inferred.

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[17] Currently, this salary level is $99,500.00

Although Members of Congress are not included in the definition of "employees," staff members and officers and employees of various legislative entities are covered. This proposed new section is not intended to affect Section 201 of Title 18, United States Code, the criminal bribery statute. This new provision is proposed in Section 106 of the Administration's legislation.

E. Travel Acceptance Authority

The bill also adds a new Section 1352 to Title 31, United States Code, to permit agencies to accept travel reimbursement on a uniform basis. Subsection (a) grants heads of executive branch agencies or the employing entity for any officer or employee of the legislative or judicial branches, the authority to accept payments and reimbursements, in cash or in kind, from non-federal organizations for travel, subsistence, and other necessary expenses incurred by its employees in traveling to attend meetings, conferences, training, public speaking engagements, and similar functions concerning the functions or activities of the agency. Subject to limits established in regulations to be issued by the General Services Administration, authority extends to the acceptance of payments or reimbursements in excess of the established per diem amounts. The proposed amendments appear in Section 107 of the bill.

F. Service on For-Profit Boards

Implementing one of the recommendations of the Commission, proposed Section 211 would prohibit Members of Congress and federal officers and employees in all three branches of government, who are required to file financial disclosure statements, from serving on the boards of directors of for-profit commercial enterprises (whether or not compensated). The Section also provides that requests by such employees to serve on the boards of directors of nonprofit organizations be reviewed on a case-by-case basis.

At present, no statute prohibits any federal employee from serving on the board of directors of nongovernment organizations. Senate Rule XXXVII precludes Senators and officers, and employees paid over $25,000 per year from serving as an officer or board member of any publicly regulated business entity; the House Rules contain no such limitation.[18]

Mr. Chairman, that concludes my testimony and I would be happy to answer questions at this time.

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[18] Canon 5 of the Code of Conduct for United States Judges prohibits a judge from serving as an officer, director, active partner, manager, advisor, or employee of any business, except for businesses wholly owned by the judge's family members.

The **Chairman**. Thank you, Ed, we will certainly be back to you. There are a number of controversial issues involved in the President's distillation of the Wilkey report.

I think at this point we should move to Mr. Cutler, who chaired the Quadrennial Commission, as well as served actively on the Wilkey Commission.

Lloyd, we are glad to have you this morning.

STATEMENT OF LLOYD N. CUTLER, MEMBER OF THE WILKEY COMMISSION

Mr. **Cutler**. Thank you very much, Mr. Chairman.

I think all of us bear the scars of the Quadrennial Commission. I regard them as badges of honor. Of all of the proposals relating to Congress that are set forth in the Wilkey Commission report, and in the President's legislative package, it seems to me the one that transcends all others in degree of importance is this matter of abolishing honoraria. I prefer to call it dishonoraria. It is receipt of personal income. As bad as campaign contributions are, there are restrictions on how they can be used. It is receipt of personal income from groups that are interested in your vote. That is, it seems to me, just not compatible with the way a member of a representative body is supposed to behave. It comes very close to government for sale, or at least, legislation for sale.

We all know, and certainly the Quadrennial Commission recognized, the practice has come to be tolerated because congressional salaries are so low, inadequate, in relation to the cost of being a Member, and because the public has shown such antipathy toward salary increases. But this back door kind of increase for Members of Congress alone, and particularly for the more powerful Members of Congress, in contrast to others, only serves, it seems to me, to offend the public even more, and to lower public opinion of Congress as an institution, even below the minimal level at which it now stands.

You received a lot of mail about the pay raise. I received a lot of mail. Perhaps it wasn't or didn't have as many physical objects in it as yours. But I still remember a note written in the sort of block print that random notes are supposed to come in, that said "The only thing worse than an elected official is a child molester." Now, that is the degree of venom out there.

We all know how hard it is to understand, but the practice of honoraria, it seems to me, particularly when it is as thoroughly reported as it is right now, only contributes to that. It is ironic it comes at a time, certainly in my memory in Washington, when among Members of Congress. their basic integrity is certainly at a considerably higher level than when I first arrived in Washington, when plain envelopes filled with cash were the common practice, not only in the halls of Congress, but even in the executive offices.

It is just an unrefutable proposition that people who work for the United States Government ought to have only one paymaster, and that is the United States itself, and certainly they should not be paid personal income by those who have a direct interest in lobbying them one way or another on a particular piece of legislation.

It seems to me that despite what we learned for the 100th time about public opposition to pay raises it is a matter you should confront squarely. One way to do it would be to abolish honoraria and all subterfuges for honoraria effective let's say, in January of 1991, after the next election. Increase congressional salaries by the same amount—that is the amount of the present ceiling on honoring—also effective January 1, 1991. Increase the Judiciary and the Executive Branch the same amount effective immediately and go to the voters in 1991 with that package.

It is a risk. We all know it is a risk but it is a principle stand. If the public decides that it prefers the finest Congress that other people's money can buy, I should think you would not wish to be a member of that kind of a Congress.

So, I urge you very, very strongly to grasp this nettle. It simply has to be grasped. To do it together in a package related to it. It is a principle stand and principle stands will usually carry the day, and the public can and must be educated to understand that. As I understand it, you have already heard about the difficulty of filling positions in the Executive Branch.

This is a situation with which you simply must come to terms and every outside group that has looked at the matter has come to the same conclusion. I would make only two other points right now, out of all the recommendations.

One relates to the proposal of the Wilkey Commission that Congress establish for itself an independent ethics officer, an Office of Congressional Ethics somewhat similar to the Congressional Budget Office, which would take on the task of hearing charges, sifting them out, investigating them and making reports to the two Ethics Committees, who would also have power to deal not only with charges and to investigate and to make reports to the two committees for their actions, but also to issue interpretive regulations about the meaning of the ethics rules as you establish them in legislation or by the passage of internal rules.

If you did that, you would get away from this difficult problem of the committee being judge, jury and investigative, prosecuting officer all at the same time. The situation is serious enough so that an independent officer, it seems to me, reporting to the two Ethics Committees, would do a great deal of good.

The other point relates to outside earned income. We recommend that there be a ceiling on outside earned income, the same ceiling in all three Branches of Government.

We also recommend, however, that the President be authorized to exempt certain categories of income from that ceiling, categories that raise no ethical issue of propriety and that do not drain the time of a public official unduly. The President did not adopt that particular recommendation to create authority for such exemptions.

What I have in mind, of course, are the Members who have written novels, the Members who might be capable of writing—I am speaking of the entire range of the government, all three branches—writing a popular song, a judge who was a professor at a law school, continuing to lecture at a law school. There are any number of categories, perhaps a Member with a small private business, or with a family farm or a family ranch.

There is really no question of ethical propriety in that situation, and it does seem to me if you pick up the proposal that outside earned income be limited to some percentage of government salary, that the authority to exempt certain harmless categories of income would be well worth preserving.

We all know that Anthony Trollop worked in the British Post Office, that Herman Melville was a U.S. Customs Officer. Today, if someone on Mr. Dennis' staff, for example, should prove to be the next Ernest Hemingway, he would have to resign his government job in order to enjoy the royalties and sell the movie rights. And there is no point in harassing government officials and making them less than complete citizens of this country to that extent.

Thank you.

The CHAIRMAN. Thank you, Lloyd.

Now, going to Nancy Neuman, President of the League of Women Voters, and a person who has also served on the Volcker Commission.

STATEMENT OF NANCY M. NEUMAN, MEMBER OF THE VOLCKER COMMISSION AND PRESIDENT, LEAGUE OF WOMEN VOTERS

Ms. NEUMAN. It is a pleasure to be here today.

I am here speaking for the commission and particularly, I was asked to discuss the report of the task force I served on on Public Perceptions of the Public Service. So I thought I would outline briefly our recommendations on rebuilding the public trust. The commission, in its report, has called for a renewed sense of commitment by all Americans to the highest traditions of the public service.

To a public service responsive to the political will of the people, and also protective of our constitutional values.

To a public service able to cope with the complexity and conflict and also able to maintain the highest ethical standards.

To a public service attractive to the young and talented from all parts of our society and also capable of earning the respect of all our citizens.

But to reach this ideal, it is necessary to rebuild the public's trust. Restoring its sense of pride in public services in large measure, and the public's willingness to trust their own government. Unfortunately, despite a slight turnaround in recent years, nearly half of the American public feel that average people have no say in government, while three of four say politics and government are too complicated to understand.

Some of this distrust arises from skepticism toward big government rooted in American history, and some from opposition to specific policies. These concerns are natural, and they are often healthy in a pluralistic society, committed to federalism and free speech.

The commission focus lies elsewhere, on public perceptions of corruption, waste and ineffectiveness in doing what government sets out to do. Some of this distrust comes from scandals like Watergate and Pentagon procurement, some from wasteful government programs, some from past campaign rhetoric.

Such distrust, if continued, may undermine the democratic process itself. It most certainly acts as a disincentive to potential recruits who too often associate public life with frustration or breaches of integrity. Two pieces of evidence cited by the Task Force on Public Perceptions illustrate the potential impact of negative attitudes on recruitment.

A recent survey by the GAO found that almost 60 percent of federal personnel officers believe that the poor public image of federal employees was hindering their ability to recruit people their agencies need. In 1987 the Merit Systems Protection Board survey of college deans and placement officers at the nation's top colleges and universities found that the image of the federal civil service was a primary reason why their public administration graduates were not attracted to government.

Public trust will not be restored unless and until Americans are reassured that those in charge at the top of government will honor their trust and those in the civil service below will commit themselves to the highest levels of service.

Toward these ends, the commission makes the following recommendations:

First, Presidents, their chief lieutenants and Congress, must articulate early and often the necessary and honorable role that public servants play in the democratic process, while at the same time, making clear that they will demand the highest performance from those who hold the public trust.

Second, Presidents must set the highest standards of ethical conduct for those who hold the public trust and act quickly and firmly to remove those who violate that trust. Members of Congress and their staffs should be covered by similar standards.

Codes of conduct to convey such standards should be simple and straightforward and should focus on the affirmative values that must guide public servants in the exercise of their responsibilities.

Third, the President and Congress should establish an independent advisory council composed of members from the public and private sectors to monitor the ongoing state of the career public service and make a biannual report to Congress with his own comments and responses, including any recommendations for change that he may have.

Corrective action not only requires presidential leadership and congressional support, it also must be part of a coherent and sustained long-term strategy. The proposed independent advisory council is designed to insure that the state of the public service remains high on the national agenda. The need for a strong public service is growing, not diminishing.

The National Commission on the Public Service hopes its report will be a step toward strengthening the public service and will serve as a catalyst for debate and change.

Thank you.

The CHAIRMAN. Thank you, Nancy.

Let me ask a question and any or all of you may want to comment on this. There seems to be a growing trend toward treating all three branches of Government alike to the greatest extent possible. President Bush's proposals deviated somewhat from the Wilkey Commission. For example, not proposing to eliminate honoraria or proposing a congressional pay increase, but, for example, it proposed that the independent counsel apply to all three branches.

Most of the commission's recommendations have been moving in the direction of treating outside income in a similar manner in all three branches. Lloyd discussed the concept of an officer of ethics, who would report to each branch but who would have some independent status. I am wondering if you could comment to the degree to which it is appropriate to treat all three branches alike, and at the same time, any concerns that any of you might have about the need for separation between these three co-equal branches, when appropriate.

Mr. DENNIS. Since this was an issue that I think was raised by the President's bill, the general concept is all three branches really should operate under the same legal standards insofar as ethics are concerned. In terms of the specifics, we do recognize that duties and responsibilities of officials in each branch do differ somewhat and there may be, in working on the details of how the legislation is implemented, there may be occasions for distinctions to be made.

But I think that the real issue here, is what is it that informs our judgment as to where those lines should be drawn, where there is going to be a departure. I think that the key here is that we should presumptively move in the direction of a consistent standard and only depart from that consistency where it is very clear that the particular necessities of a member of, let's say, the Legislative Branch, would be unfairly restricted by applying a standard that had been designed really for the Executive Branch of Government.

The CHAIRMAN. And you found those factors there on the question of honoraria and pay, or was that simply a decision to, in effect, defer that question for consultation between Executive and Legislative Branches?

Mr. DENNIS. I think it is a matter of deferring it. I can only assume that because the issues raised by the President's bill are those that really seek to apply standards that are already in place now that Executive Branch officials have to live by, that that was the first cut on this. But I would not interpret the fact that honoraria is not treated in this bill as evidence that there is not interest by the Administration in addressing that issue.

The CHAIRMAN. Mac, you may want to comment on this. You might specifically—because I know of your expertise on the Judiciary Committee—want to speak to the question of independent or special counsel.

Mr. MATHIAS. I think, as a general matter, I agree with Mr. Dennis, that there ought to be similar standards applying across government. There may have to be some technical adjustment, because of conditions of employment in different branches, but basically, the principle should be the same, and that includes honoraria, outside gifts of any kind, outside income.

On the question of independent counsel, I don't see the necessity for covering the Legislative Branch by outside counsel, because the logic for having an outside counsel doesn't exist. The purpose for it in the Executive Branch is that the Attorney General has a tough time in investigating the President, who appointed him, or his colleagues at the Cabinet table, whereas the Justice Department relationship to the Legislative Branch is not the same.

The normal functioning of the Justice Department should be able to provide the kind of coverage in the Legislative Branch, as in fact, it did in the ABSCAM cases that we all remember unhappily. So I think that the need for an independent counsel is not as compelling with regard to the Legislative Branch.

The CHAIRMAN. Lloyd.

Mr. CUTLER. I think the important principle, Mr. Chairman, is that Congress not appear to the public as exempting itself from rules it applies to the other two branches, and that is particularly clear in the case of honoraria and outside earned income.

There are other aspects of the matter where it is necessary to differentiate between the branches. The clearest—and the Wilkey Commission did this, and the President followed us on this—is not to extend the conflict of interest laws to Members of Congress in the sense that Members of Congress would be barred from voting on matters in which they have a clear financial or personal interest and would not be subject to criminal prosecution if they did vote.

It is clear that in a representative form of government, Members of Congress are bound to have interests in the matters on which they vote, and to say that they couldn't vote on a matter in which they had an interest, would mean you would be depriving a particular district or a particular state, of its vote. Senators and Congressmen from oil states are going to vote on oil legislation, and everybody knows that. So there is a case where you clearly should differentiate between the branches.

With respect to the independent counsel, although the Wilkey Commission did recommend it, I would tend to agree with Mac, it is not a major issue. There is a distinction between the Attorney General investigating members of the President's official family, and the Attorney General investigating and prosecuting Members of Congress.

On the other hand, I think the public does believe that powerful Members of Congress, Chairmen of the Judiciary Committee, let's say, or the Chairman of the Appropriations Committee that has the Department of Justice under its wing, might be treated a little bit more tenderly by the Department of Justice than other people.

In order to clear that doubt, and the public is very cynical about the Department of Justice and Members of Congress, it might be a good idea to create , extend the independent counsel's authority.

The CHAIRMAN. Nancy?

Ms. NEUMAN. Well, certainly the Congress can set its own code of conduct, and the Volcker Commission does note that there should be a similar code of conduct to what the Executive Branch has. But you don't want to get into a constitutional wrangle and have one branch tell another what its code of conduct ought to be.

But the overarching issue that the Volcker Commission identified was the need for leadership and that crosses all three branches. I think you have made a good start in having a bipartisan task force, because if you can maintain a bipartisan point of view, you can establish that leadership position on the issues of ethics and conduct.

I noted there is an article in the Washington Post recently by businesses who are trying to instill ethics and some of the surveys our commission took showed that business ranks lower than politics. That will make you happy. But basically they are saying we can have codes of conduct, but a lot of this has to do with the values we instill ourselves in our company and how we treat each other, and how we treat our customers. I realize that sounds very general, but it is an overarching problem. We all have to do something about it.

The public has a responsibility as well, to be involved and not just be out there throwing darts at their representatives. We all know that the public tends to like their own representatives but has a real negative view of Congress in general. Somehow we need to have the aggregate viewed better as well.

I do think, and the Volcker Commission points out, this is not going to be a short term fix. It will take a while to restore the public trust, but I think you are making a good start and if you can maintain this leadership role, and also perhaps a bipartisan look at campaign financing, which has tended to break down into two camps very quickly, I think we could get someplace.

Mr. DENNIS. Mr. Chairman, I might comment on the independent counsel question. I do agree with Mr. Cutler's comments, and Senator Mathias', to the extent that in terms of a conflict of interest, or a sense of being more lenient with higher levels, Members of Congress or the Senate, that is a perception problem but the reality is that, quite frankly, there are enough aggressive prosecutors out there that if there is a serious case, the chances that that case is not going to be vigorously prosecuted are rather slim.

The problem with the independent counsel statutes is that in its procedures it is so restrictive on the Department of Justice in referring matters. It is a hair trigger mechanism that basically does not afford the official the protection of grand jury secrecy. It does not allow the Department to determine whether or not the allegations really have any basis in fact.

It thrusts the allegation into the public domain very early, with corresponding gearing up of a tremendous bureaucracy, where you have the appointment of an independent counsel, who, the lawyer that accepts that, is not only duty bound to do an outstanding job, but is publicly scrutinized very closely with regard to those allegations.

The person who is subject to an independent counsel is subject to spending perhaps millions of dollars to defend himself against what may be a groundless charge. The reason I am familiar with this is that I administer that statute and I think that the statute is tremendously unfair. I have been a prosecutor for 15 years and I know that one of the things I am very proud of is that hopefully, in the Justice Department, we are as equally anxious to exonerate someone from an unfair allegation as we are to prosecute someone when the evidence is there.

But I think in the practical aspects of employing that statute, there are tremendous burdens place upon those who might have to be scrutinized, whose conduct would be scrutinized under those procedures. It is in that aspect that I think we ought to have a consistent treatment across both the Legislative and Executive Branches of Government.

The CHAIRMAN. It sounds like, Ed, you are suggesting if the Congress had to live with this statute it might be changed?

Mr. DENNIS. It might well be. Personally I think it is a very unfair statute and I think that it really skews our process of justice to such an extent that it works injustice in many cases.

The CHAIRMAN. I don't want to get off on that tangent any more, but it sounds like we ought to be talking about what is wrong with the statute rather than extending it to another branch of government.

At this point, I would like to yield to my co-chair, Lynn Martin.

Mrs. MARTIN. Thank you, Mr. Chairman.

Just a brief welcome. We have had a lot of patient Members here that want to ask this very distinguished panel some questions. We welcome them. I should probably say that this task force is not involved with campaign reform. I should make that clear. The burden to re-examine the whole ethics system, including honoraria and everything else, is enough. I think if we can make it through that swamp, without either the public or our colleagues wanting to get a special prosecutor for us, will be interesting enough.

We are very aware of how the ethics and campaign reform issues intertwine, but they were divided and I think this panel, again in a very bipartisan way, agrees that that division was probably well made, that there would just have been too much as we look on really the time limitations that we are putting ourselves under as we try to see if we can accomplish something along the lines that Nancy talked about, and I think actually all of you touched on.

The chief goal of this group is to have the kind of ethical system that is understandable by our colleagues, but also can restore some of the measures that Mac talked about, of that essential public trust that there has to be.

Mr. Cutler, you mentioned that too often it has gone beyond the normal—you are quite correct—distrust of government. That is sort of a very American view, but we have gone beyond that. I think the very decent people here, of which I would say most on both sides of the aisle are, and the future depends on rectifying some misconceptions.

It is rather disappointing that disclosure isn't enough. I have had to come to that same conclusion. I always thought if we made it all open, everybody would say, see, but that doesn't seem to be working. I don't think that means we go back to no disclosure either, but it does mean we have some other parts of this to build.

I would yield all of my time outside of the welcome, to other members of the committee.

The CHAIRMAN. Dave Obey.

Mr. OBEY. Thank you, Mr. Chairman.

I can't help observing that Archie the cockroach said once that just as soon as the uplifters get a country uplifted, it slips into another nose dive. I don't think we ought to be operating under any impression that no matter what we do here, we will greatly change the public perception of politics.

The single fact is that Congress does very well in the polls when we are rolling things through the Congress that the President wants, and when we are not, we don't, no matter what is happening. Other things effect our public image, but if you track the history of polling, you will see that that is the case.

Having said that, Mr. Dennis, I would like to suggest that I agree with a lot of what you said about the independent counsel statute. I think it is a very tough problem. I think that anybody who is accused under it is automatically assumed by at least 50 percent of the public and probably a good two-thirds of this town, to be guilty before review on day one has taken place. So I think there is a burden on the Congress to try to correct some of the rough edges of that statute.

I also think there is legitimate concern about enhancing the ability of the Executive Branch to in any way go after the Congress. This is not generally understood by the public, but one of the reasons that there have been somewhat different procedures for legislative bodies throughout our history is because of the history of concern about the abuse of power by the crown.

I can certainly see instances if we had the wrong Attorney General, as we sometimes have had in our nation's history, I can see what a mischievous, politically minded Attorney General might do with that special counsel power to embarrass people in the Congress, or embarrass the Administration on quite different subjects than ethics, whether it be foreign policy, whether it be other controversial issues.

So I think if we care about the constitutional separation of powers, which are there for a reason, we will be very careful about extending the statute about which all of us have basic concerns to begin with.

I do have some questions for Mr. Mathias and Mr. Cutler. I find it ironic—and I don't disagree with what has been said—but I find it ironic how much the situation has moved because when we passed these original reforms in '77, Mr. Hamilton and I originally started with the concept that we ought to ban all outside earned income and we wound up backing away from that position, because we were convinced both by some very good testimony from Members and some very good testimony by members of the press, who testified that disclosure would be enough.

We did not buy that argument fully. We did place some limits on outside earned income, limits which were seen as very stringent at the time, and very painful, and cost some members over $100,000. But in fact, I recall one of the Post newspaper reporters at the time writing an Op Ed piece the day we passed our package in the House, urging its defeat because it was too tough, too invasive of privacy, and too "Common Cause-ish."

It was suggested we should rely on disclosure, there should be no limitations on honoraria, no limitations on outside earned income, and in fact, the article even objected to the fact that we did not have an exemption for book royalties. We did, but the reporter didn't understand that we had it. Ironic in terms of today's circumstances.

Let me ask with respect to the question of honoraria and pay. I have generally one rule when I give a speech. If I talk to members of the American Jewish community, I give them a speech on why they need to trade territory for peace. If I talk to Arab Americans, I tell them why they need to accept Israeli plans for elections. If I talk to the American Medical Association, I tell them why they ought to support national health insurance.

In short, I have a rule which is if I don't tell people what they don't want to hear, I don't go. Life is too short when they have to hear from everybody else. I don't happen to think there is anything wrong with that, but I do recognize that the Oshkosh truck situations get involved and they mess up the public perception.

So this institution would be better off if we could work the kind of trade-off discussed by Mr. Mathias and Mr. Cutler. We tried that in 1977. In fact, that is what we did partially. Your commission tried to finish the job, and I salute you for it. The problem is that the people who could have helped make that happen were the greatest opponents of it.

The Washington Post managed to get into an editorial position where it opposed the only package that could pass to clean up the mess which they objected to, and they supported the only procedure by which it cannot happen, because they neglected the fact that if you require a roll call on pay, the pay will never change. And they neglected the fact that at least in the other body we have members who have told us consistently that the best way to deal with this problem is never to raise pay, simply raise the outside income limit. It is a much quieter way to get a pay raise.

That is the game that went on on the last pay raise issue. So my problem is, if I agree with what you are saying, I can't for the life of me figure out how to get there. I think it would be a benefit to the public, but I don't see how we get there.

Let me ask you, Mr. Cutler, and Mr. Mathias, can you think of any vote that I can cast which is a greater conflict of interest than my voting to set my own pay?

Mr. CUTLER. Well, Mr. Obey, I am very sympathetic with everything you said. I wore myself out with my friends at the Washington Post on this issue. I was one of those who helped to devise the present methods of avoiding a vote on the Brady Commission, the Brady Quadrennial Commission, back in 1985. It didn't work because the public is so set on the notion not only that you shouldn't have a pay raise, but almost equally important, that you shouldn't be allowed to have it without voting, and that is a great tragedy.

Two weeks before the end of the Constitutional Convention there was a draft that had this problem fixed. It provided that every six years the Supreme Judiciary—as it was then called before it became the Supreme Court—would convene a jury of the most responsible farmers and merchants who would determine what the average increase in the price of wheat had been over the preceding six years, and salaries would be automatically adjusted by the Supreme Court for the following six years.

Maybe we could go back to that. But the public has to vote on that one, too, unfortunately, and it takes two-thirds of you fellows of both Houses, plus three-quarters of the States.

Mr. CUTLER. But I don't see a solution other than your grasping this now, living up to the principles of Profiles of Courage. I can't believe, looking at the Members sitting in front of me, that if you did what I proposed, you abolished honoraria and raised pay by an equal amount that any of you would fail to return for the 102nd

Congress. Why don't you just do it? You are not going to lose your seats. Just do it.

Mr. OBEY. Let me suggest, I understand what you are saying. The final question is are there 218 people who agree with your observation.

Mr. CUTLER. If you led them, I think they would do it.

Mr. OBEY. Let me make one more observation. If we did what you are suggesting, made both effective in 1991, I think what you would probably see is a carbon copy of what, for instance, Newsweek did when they ran an article on the pay issue. They use as an argument against a pay raise the fact that after all these guys also get outside income. They had buried five columns away in the story a one-sentence explanation that the intention was to eliminate that outside income.

So I suspect that one of the reasons Members are reluctant to follow your advice is they think publications like Newsweek would continue to savage the institution for perceived abuses, which it had corrected even in the context of what you are talking about. So if you can tell me how to convince people that the institution will not be unfairly taken advantage of by people who cover what we do, then I might have some faith in your prescription. Otherwise, I have large doubts.

The CHAIRMAN. Let's hear from Mack.

Mr. MATHIAS. I think the rest of us has some responsibility to act at this point. And, incidentally, I have faced that conflict of interest you have mentioned a number of times. I don't think I have ever voted against an increase, and I don't think it had a major adverse impact, but maybe I was lucky in that respect.

But I think at this point now the rest of us have to wade in. Any kind of serious legislative effort requires some buildup in the public before the Congress can grasp it. Sometimes it takes several years to set the stage. That is the point at which we now are. I think Lloyd Cutler rendered an enormous public service by describing what is likely to happen, and I suspect he will be able to continue to render a public service in highlighting the tragedy that is going on in public service as his predictions come true.

Out at NIH, there are positions of enormous importance that are unable to be filled because you can't find scientists who can be hired at the level of pay that is acceptable for that kind of work. The public shouldn't be under any delusion that the same pay level doesn't ultimately get paid because if you have to contract out the work, you pay for it at market prices plus the contractor's markup. This is a public education process we have to go through, and I think we have to buckle down.

Those of us who are not in the conflict-of-interest situation should try to build up the stage for you so there is better public understanding than there was. As far as the quadrennial report is concerned, as you know, only 20 percent of it dealt with congressional pay, and 80 percent with the rest of the government. That clearly did not come through in the public dialogue that took place on this subject.

So I think we have got to work very hard to correct these misapprehensions, these false perceptions. Then I think we set the stage so that you can do the job that needs to be done in the public interest, not just in your selfish interest, but the public interest.

The CHAIRMAN. Thank you, Mack.

Nancy.

Ms. NEUMAN. I am sure you know the Volcker Commission also recommended a pay raise which seemed to be the only part of our report that was ever mentioned in the newspapers.

The CHAIRMAN. Casting the entire report in doubt, I am sure.

Ms. NEUMAN. It suggested there be a ban on honoraria and other outside income for all three branches and there be a phased-in pay raise, but if this could not be accomplished, the phase-in and elimination of outside income, that the Congress separate its salaries from the other two branches and vote on recommendations of increases for those other two branches.

I suppose that would leave you really behind, but it certainly would be a good move in terms of public relations.

Mr. OBEY. I took a poll on that in my district. My district is more opposed to judicial pay raises than congressional pay raises. They don't like judges or lawyers any more than they like politicians.

Ms. NEUMAN. I agree, there is a great deal of work that needs to be done to educate the public. As I mentioned earlier, there is a responsibility on the part of citizens to educate each other, and the Volcker Commission is having a meeting next week to try and bring in other organizations that have outreach around the country and get them to help us implement our recommendations and perhaps broaden the network for this, and as I have mentioned before, it is a long-term process, but the public does not understand this issue, and you can't do it alone clearly because it sounds too self-interested, so hopefully we can help spread the word.

The CHAIRMAN. Thank you for those comments. I want to go to Paul Gillmor. It probably will pay for the pulpit of the Presidency to galvanize this issue and whatever courage exists in Congress.

Mr. GILLMOR. Thank you, Mr. Chairman.

I appreciate the participation by the panel members. I know we have got a lot of expertise here which is going to be very helpful. I have just a couple comments and then some questions. I think what we want to do or achieve is some fairly simple thing. We want to assure we have honesty in government, but we want to do that in a way I think we don't discourage participation, and that is one aspect, when we are looking at these rules, that nobody ever seems to focus on.

For example, I have talked with some of my freshmen colleagues who have approached me because I am on this panel. One of the things that bothers them the most is the fact that they are not really sure what the rules are, and there is a very high degree of complexity. I saw some of the forms people being considered for Presidential appointments have to fill out, and those are rather awesome and complex for a lot of people.

It seems to me something we will never see are those people who don't participate in the process by either seeking and achieving appointments or running for office because of these rules, and we will never know what we have lost. So I think we want honesty, rules to achieve that, we have got to do it in a way that doesn't discourage participation, and I think we have to have rules that are very clear and simple so that people understand them. I think Dave Obey made a very good point when he said we are not going to change the public perception, and when the current law was passed, everybody talked about how it cleaned up government, we will have public confidence. It only takes one crook or a lot of publicity, and that confidence is gone. So I think we are just going to have to look at this and do the right thing.

Following up on some of the panel's comments on the pay raise and the fact that Congress won't bring that up for a vote or won't pass it, one of the things, it seems to me—and I would like the panel's comments on this—is maybe the lack of political courage in Congress. There are a lot of issues where Congress sometimes only looks at the next election, and to the degree that we have rules that cut Members of Congress off from the real world economically, to what degree does that encourage them to vote for what gets them re-elected instead of what is in the public interest?

So with those comments, let me ask you to disuss the matter of all outside income. We have unearned income, earned income, and only part of earned income is honoraria, but that is mostly what people have focused on. So I guess I would like to know the panel's views on those three types of income, whether it should be permitted, whether it should be limited and which should be banned. That would be unearned income, earned income, and in the third category, honoraria.

Mr. CUTLER. Mr. Gillmor, I think clearly there should be no limit on unearned income, that is income from your investments before you came into public life. And there is no such limit in any branch today. So I think we can put that one to one side, and I don't think there is any controversy about unearned income in that sense.

With respect to earned income, there is always the problem that you, a Member or government official or a judge, might be invited to do something for money in order to influence his actions. That is the reason why we have limits on earned income. It doesn't make too much sense to solve the problem by a percentage limit on earned income, because that still leaves plenty of room for the very types of influence you want to avoid, people who are offering you money to do something, be a director of a company, hire you as a lawyer, or whatever, in order to influence your vote or gain some sort of hold on you.

It would be much better to ban by subject matter. That is why we urge if there is to be a ceiling on outside earned income, as you have legislated for the Executive Branch that is in effect today, the 15 percent limit, if that is going to be true, at least there ought to be a power to exempt the kind of outside earned income that is harmless and give that power to the President or someone so you are not making those decisions yourselves.

With respect to honoraria, it seems to me the case is crystal clear, it is a totally indefensible practice, and the only argument, and it is hardly a moral argument in its favor, is that your salary is inadequate. How can you let yourselves be paid personal income that you can use to put your kids through college or to buy the car to replace your 10-year old car when those people who have an interest in your vote, and even universities lobby the Congress and have an interest in your vote today, without creating the appearance, leave aside the reality, but without creating the appearance that you are under an obligation to them? And there is no answer to that. There is just none.

Mr. Gillmor. In the work that you have done, has anybody talked about the discouragement of participation? Do you think there is legitimate concern in that area?

Mr. Cutler. You mean it is good for you to go out and make these speeches?

Mr. Gillmor. No, I don't mean that. I mean in terms of people actually coming and participating in government. I am not talking about honorarium here. I am talking about all of the rules that people in public life have to live by, most of which are good, to encourage honesty. Have any of these commissions looked at the question of whether there are talented people out there who do not go into government service because of these various requirements? Not that they are dishonest, but they don't want to do it?

Mr. Mathias. A lot of consideration is given to that, because public service demands good people, and you don't want to discourage good people. The divestiture laws, for instance, that apply not to Members of Congress but apply to other branches of government, whereby David Packard was required to divest himself of large amounts of stock in Hewlitt-Packard, which cost him millions of dollars under divestiture, he was a patriot, he was willing to take that loss. Undoubtedly there have been other people who have been approached for public service who would look at the kind of impact on divestiture on their situation and would say, "No, for personal reasons I can't afford to do that."

So this has been looked at, and as the chairman mentioned a few minutes ago, harassment in all sorts of bureaucratic forms, investigations, I think that has to be a part of the overall work at the commission. And the Volcker Commission did weigh that and point out that there had to be some consideration of it if you want to have the ability to reach into the full pool of talent that is available for public service.

On the earned income question, let me just say there is, in addition to the perception of conflict of interest, there is the question of how much activity you want to allow a public servant in earning income outside his public job, and I might say that concern bubbles up to the surface every now and then. I remember a case of a Senate confirmation in which the nominee before the Senate was prone to write books, and one particular member of the Senate thought he might write too many books while he was on the public payroll and exacted a promise from him he wouldn't write books as long as he held this public office. So that is a correlative consideration.

Mr. Gillmor. Thank you.

The Chairman. Lou Stokes.

Mr. Stokes. Thank you very much, Mr. Chairman.

Let me join with my colleagues in expressing our appreciation. It is a very distinguished panel. I think your presentations have been excellent, I think you have given us a lot of substantive matters to think about this morning. I would like to ask Mr. Dennis about the post-employment restriction sections.

We have recently had a rash of top-level governmental employees who have either resigned or indicated their intention to resign prior to these sections taking effect, and cite specifically the vagueness, the indefiniteness of these sections. Yesterday there was an article I think in the Post about some 30 top officials who have announced their resignations. One of them cited the fact they took these sections to three different lawyers and got three different opinions with reference to what the situations in effect meant. Most of them are concerned about the possibility of going to the penitentiary as a result of merely seeking employment when they left government office.

I would like to have your answer with reference to those sections.

Mr. Dennis. I did see the article in the Washington Post regarding the recent rash of resignations. I believe that the particular amendments there were to the Federal Procurement Policy Act of 1988. And, of course, that was in a very narrow frame where you are dealing with Executive Branch officials who are involved in the procurement process and then seek to leave government office, and there I think the concern was that these individuals basically are employable in a very specialized area and that if these amendments are read very broadly then, as I think one of the individuals stated, he didn't want to take a job at McDonald's. He wanted to be able to engage in the area he had spent so much time in.

That may be a particularly onerous problem in these technical areas, in these highly specialized areas. Of course, in the bill that the President has submitted to Congress the language is much, much broader and would restrict quite substantially these types of activities.

The question of vagueness and uncertainty, I think, are problems that perhaps we lawyers are a little more used to living with than perhaps those that are not in our area or feel a little more uncomfortable with. I don't know there is much we can do aside from trying to flesh out the statutes with appropriate regulations that would elaborate on the breadth of those statutes. I have occasion to apply some of these sections, particularly under reviewing Independent Counsel allegations, and I must say that I found the OGE regulations very helpful, and I found that, at least in the few cases that I have had to make judgments on, that I felt satisfied I knew where the line was drawn.

But aside from that, I don't believe that we can do much more other than to be as precise in our language as we can.

Mr. Cutler. If I could interject for a moment. This new statute, the one you passed last year, is really a bad statute, and the Wilkey Commission recommended that you reconsider it and adopt instead the much more limited prohibition on the transmittal of proprietary government information once you leave office. I would agree with the lawyers who have been telling people, "Don't take a Defense Department procurement job or even anything involving supervision of procurement unless you are a millionaire who doesn't intend to return to some company, business career or scientific career or legal career thereafter."

That statute is so broad it would keep you from representing a client on a matter, let's say, a contract dispute under a procurement which you may have supervised several years ago. There are cases of scientists who are experts, for example, on under-water sonar, that is all they know, that is their field. They are brought into the government to work on a sonar issue. When they come out, they can no longer work for any contractor, even a university, doing research who has anything to do with sonar. They can't work in the sonar field.

It is a serious risk, presumably nobody is going to prosecute them. But can't really go around determining your future on whether the Department of Justice may elect not to prosecute you. The law is a very bad law.

Mr. STOKES. Thank you, Mr. Chairman.

The CHAIRMAN. Bob Livingston.

Mr. LIVINGSTON. Thank you, Mr. Chairman.

I want to thank the panel for an outstanding presentation. I had to blanch when it was suggested we might be compared with child molesters. That concerned me.

I totally agree with what you have just said. I think we have gone too far and the revolving door, frankly, is a great concept, but it is a concept that seems to be very difficult to implement, and I heard some people from the old NASA program talk about the Apollo project in which we sent rockets to the Moon and men to the Moon who said that had that same provision been implemented back then, we would never have gotten there because those scientists would never have signed on for the Apollo program because they knew they were going back to private industry afterwards. I think we really need to temper that.

I am particularly concerned about the differences between earned and unearned income. You said there is really no dispute about that, and I guess maybe I will just create one. Because I think that there is grave concern among some Members of Congress that some Members are very, very wealthy and don't have to draw their salary and can simply clip the coupons and then can stand on the Floor of the House and condemn a pay raise. Whereas others come up here with families or without because they can't afford housing and have a very difficult time in the environment of Washington, where the cost of living is very high and they can barely survive economically.

Then we pass rules which limit their ability to go out and legitimately earn income while not preventing those others from simply sitting back and clipping their coupons and drawing unearned income. You indicated that outside businesses of some sort are okay. That may be true. But once you get into the business of limiting outside earned income, it seems to me you are fraught with abuse.

I suggest to you, consider a very bad artist, consider a person who splashes stuff on a canvas and calls it art and sells it on the open market to a dear friend, or otherwise, for whatever reason, for $100,000 a shot. Now, it seems to me that what you are saying is that a book writer, an artist, a musician, and a person engaged in various other businesses really should be exempt from earning, from having a limit on their earned income. But you can abuse it. It has been abused in the past or apparently may have been, and will be in the future.

I think the better suggestion is that each instance ought to be looked at on its own merits. Once you start putting limits on earned income, you are getting into a lot of problems and causing problems for Members who are at a disadvantage if they are much poorer or less wealthy than their colleagues who sit next to them. I throw that out for your comment.

Mr. CUTLER. I agree, Mr. Livingston. It would make more sense to limit outside earned income by category or by the nature of the interest of the person who is providing you with that income. In your case of the artist, if he is an artist who can command $100,000 per painting on the market, I don't think he should be restricted from that. That is a hobby. It is as if you invented a popular song tomorrow.

Mr. LIVINGSTON. My point is——

Mr. CUTLER. But if you sell it to the Grocery Manufacturers Association and you are chairman of the committee responsible for food an drug legislation, that is something else again. Perhaps you could, just as you now have a ban on gifts that is tied to persons with a direct interest in legislation, meddlesome as that definition may be, you could do that with outside earned income. Things that are subterfuges for honoraria clearly ought to be banned.

Mr. LIVINGSTON. Have you then no suggestion for those of us who might not have as much as our colleagues and might be particularly industrious? You know, I really can conceive——

Mr. CUTLER. Yes. Raise your pay. That is my solution.

Mr. LIVINGSTON. I think that is a good idea, I agree with you, and I appreciate your suggestions about quid pro quo. There are some Members of Congress who practice law on the outside. You say that is fraught with conflict, and maybe it is if done poorly without forethought. But I would envision an able and aggressive lawyer leaving here and engaging in a type of practice which has no conflict with his activities in Congress, and we seem to be foreclosing that, and that concerns me as well.

I will only say, Senator Mathias, you talked about campaign finance. I know, as Ms. Martin pointed out, that is not a subject for this committee for review, but obviously it is a major concern in the public's eye and will ultimately have to be addressed sooner or later, but sometimes I think the concern can be over-blown when you consider the average campaign today for a Member of the House runs around a half million dollars or more, for the Senate well over $1 million, maybe $2 or $3 million, and the limits on campaign financing run $1,000 per individual and $5,000 per Political Action Committee.

Certainly we could adjust those, but I don't think those increments are that influential in the aggregate amount of a tough campaign. Your comments.

Mr. MATHIAS. Number 1, let me say as admirable as I think the work of this task force is, great as my hopes and aspirations for your success are, I think you will find it elusive to seek a particular sequence of words that are going to solve this problem. We have a tendency these days to look for formulas or codes that are going to solve problems, a sort of Gramm-Rudman-Hollings of ethics that painlessly, automatically, without any effort or will on anybody's part, is going to make the problem go away, and that is not going to happen.

You get back in the final analysis to men of common sense and integrity who make the thing work and work right, and therefore the process of selecting those men and women to make it work right is so important. So I understand the division of labor you have made, by which you are not primarily concerned with the campaign finance situation, but it does seem to me you can't escape the impact of that on what you are trying to do.

The growth of the campaign industry has been so great it has put enormous burdens on Members of Congress to raise the money to make it work. I know over in the Senate, we have fallen into a habit, I think, which is very regrettable. Late afternoons the Majority Leader will announce there will be a window in which there will be no recorded votes for an hour or so. We all know what the purpose of that is. It is so Members can leave Capitol Hill and go to a fund-raising event of some kind.

Now, when campaign financing gets to the point it is having that kind of impact on the operation of the Congress, I think it is time to stop and take a look. And without getting off into this foreign subject matter, I think my feeling is we have reached a point where you have to take a look at that.

Mr. LIVINGSTON. Thank you.

The CHAIRMAN. Don Sundquist.

Mr. SUNDQUIST. Thank you, Mr. Chairman.

I would like to return to what my colleague from Louisiana said a few moments ago, and that is in terms of the earned and unearned income, and read you one sentence from Otis Pike's testimony a couple weeks ago.

He said:

> You are not going to deserve or get the esteem of the public by treating yourself as second class citizens or treating wealthy members better than non-wealthy members.

Let's take two people. Person number 1 inherits a lot of General Motors stock and gets $250,000 a year in dividends, Person number 2 had a small business, came to Congress, gave up that income from that small business and goes out and gives a speech for $1,000 on trade policy, clean air or acid rain.

Now, why is the wealthy person who inherited General Motors stock any more honorable than a Member who goes out and gives a speech for $1,000? What is your reaction to that?

Mr. CUTLER. Well, I am sure he is not any more honorable, but the public is going to think the wealthy man who has all that General Motors stock is incorruptible by the so-called interest groups.

Mr. SUNDQUIST. Do you think so? If I have $250,000 in General Motors stock, isn't that more likely to influence a vote than someone who gives a speech for $1,000?

Mr. CUTLER. I would guess it is the other way. I would really guess it is the other way, that those who are fortunate enough to have a lot of money tend to be more independent, or at least thought by the public to be more independent, than those who are not. Some of the most successful Democratic politicians have been very rich people, and they were trusted instinctively because they were rich.

The CHAIRMAN. You mean F.D.R. or someone like that?

Mr. CUTLER. F.D.R., Jack Kennedy, Averill Harriman. The list goes on and on.

Mr. SUNDQUIST. That is assuming I agree they are more honorable, more honest.

Mr. CUTLER. I am speaking of public perception.

Mr. SUNDQUIST. Are we dealing with public perception or what is right?

Mr. CUTLER. I have to say, very frankly, Mr. Sundquist, I think honoraria are dishonorable. You are taking personal pay from someone with an interest in your vote.

Mr. SUNDQUIST. The only point I am making is it is not what seems to be. We ought to deal with what is. And if you have wealthy Members who can draw any amount of money because they happen to have been lucky enough to inherit some money and say they are going to be held in higher esteem or that they are less likely to vote a certain way, I don't think that is accurate.

Mr. CUTLER. You have three solutions. One is to bar people serving in Congress who are rich. That is probably unconstitutional.

Another is to say the rest of us can take money wherever we can get it in order to balance out. And that is more or less the rule in all of the other democracies. There are no limits on outside income for the English Parliament, the German or Japanese Parliament. I don't think you could get by with that. I think the public would reject that. And the third solution is to grasp the nettel, as I have said before, and pay Congress a decent wage for what they do.

Mr. SUNDQUIST. Let me move on to that. I know we are short on time, and I appreciate the panel being here and being so frank. Is it possible, though, Mr. Cutler, that the pay increase vote that was held this year didn't work not because of lack of courage by Members of Congress but perhaps because the voters didn't want it and perhaps it was a flawed package? Is that possible?

Mr. CUTLER. It is always possible. There are always things voters don't want that need to be done because they are in the public interest.

Mr. SUNDQUIST. Let me ask you a couple questions. Would that package have been more acceptable if it had not been the size it was and had that amount of money been spread over three or four or five years and had that taken effect after the next election as opposed to giving ourselves a pay raise during a term we were elected to?

Mr. CUTLER. It might conceivably have been more effective if spread out over a period of years, but that was beyond either the jurisdiction of this commission or of the President under the statute. The statute only allows a recommendation for the ensuing fiscal year.

Mr. SUNDQUIST. Now we are past that, we are going to have to act on our own. Would it be more acceptable if it took effect after the next election, if it was spread out over a period of years, would that be more acceptable to the voters, do you think?

Mr. CUTLER. If coupled with a simultaneous end to honoraria, I think it would be, and that is what I urge on you.

Mr. **Sundquist**. Thank you, Mr. Chairman.

Mr. **Dennis**. Just for the record, on a point I should have touched on in response to Congressman Stokes' question. These Federal procurement policy amendments of 1988 in section 602 of the President's legislation, that section would repeal that act, and the basis for that repeal is the fact that the rules there are too complex and too difficult to understand.

So on the issue related to the procurement restrictions in terms of post-employment restrictions, the act would repeal these particular restrictions.

Mr. **Stokes**. So obviously the administration does feel that there is vagueness, and this indefiniteness has created a real problem with regard to these high-level personnel.

Mr. **Dennis**. That is correct.

The **Chairman**. That is only on procurement. The revolving door statute has a 60-day delay, isn't that correct, but not any suggestion of repeal at this time?

Mr. **Dennis**. No. Well, I mean, of course, we want the act repealed, but in the absence of a repeal there is merely at this point a delay to provide some clarification. If we would have to live with it, we would want a more clear standard.

Mr. **Stokes**. There is a moratorium?

Mr. **Dennis**. Yes, there is a moratorium. I was not prepared to address these particular amendments. Otherwise I would be more familiar with them. I understand there is a moratorium on application of these amendments until clarification.

The **Chairman**. I am going to break down and give two of my colleagues 30-second caveats here to comment on some things that have been said. First Mr. Obey and then Mr. Livingston.

Mr. **Obey**. I want to take issue with one thing you said, Mr. Cutler, when you talked about public perception. When we passed rules in 1977, we looked at it, and we paid $50,000 for a public opinion poll conducted by Lou Harris. It showed there were 20 percent more people in this country who were substantially worried about a Member with large amounts of stock holdings voting on issues affecting that industry than they were about any other item before the Congress, any other question, any other potential conflict that we raised with them, much higher concerns about that than giving speeches, provided the speeches were disclosed.

The **Chairman**. We have this conflict in this country looking to the wealthy, almost involuntarily, to lead us, at the same time this anti-establishment feeling which makes business people as unpopular as politicians, so the populism keeps coming out at us, and at the same time we keep electing people born to the manor. That is, I guess, a continuing struggle in the American electorate over which direction they want to go.

Mr. Livingston.

Mr. **Livingston**. Thank you, Mr. Chairman.

I might just comment on what Mr. Dennis said about the repeal of portions of the revolving door statute passed last year and add while we were considering repeal, I share his approach to the Independent Counsel. It seems to me that we have cluttered up our bureaucracy with an abundance of outside vigilantes, and it would seem that the Attorney General and the Justice Department are more capable of handling criminal violations that might go on in public life, and I would urge that we consider repealing the Independent Counsel altogether.

I really don't think we could have one for Congress because I think the Constitution prohibits it. We have to handle our own standards. So if you can't have one for Congress, you ought to have the same standard for the Executive Branch and other branches of government. And I think that repealing the Independent Counsel altogether would be a good idea.

The CHAIRMAN. Mack, did you want to comment?

Mr. MATHIAS. Just 30 seconds on Mr. Sundquist's question. It reminds me of the old jingle about "It is the same the whole world over, and isn't it a crying shame. It is the rich that get the gravy and the poor that gets the blame."

There isn't any fairness in life, and very often in the distribution of wealth. That is inherent in this process. But it raises the question that wealthy Members very often accept the honoraria and then immediately contribute it to some worthy cause.

Now I don't discourage or disparage that, but I think it shouldn't be overlooked that being able to contribute surplus honoraria to charity is a very real benefit. It doesn't expunge the fact you have accepted the honoraria. To be able to give it is a personal fulfillment. It is a benefit of many sorts, and I hope you won't overlook the disposition of excess honoraria.

Mr. SUNDQUIST. Can I respond?

I thank you for your comments, Senator. Our mutual friend, Senator Howard Baker, says we caused our first problem when air-conditioning was invented and we stayed all year and became full-time legislators, and has proposed for some time we become part-time legislators again, cut our pay and go back to our original process.

Now I agree with him. I think that makes a lot of sense. It may be impossible. On the other hand, would the same rules apply if we were here part-time and we work full-time in some other field? We are going to have the same problem of ethics. I submit that to talk about honorarium alone and not talk about unearned income is inconsistent with what the people of this country want or what Members deserve.

Mr. MATHIAS. You have to look at the whole comprehensive picture.

The CHAIRMAN. I think we have had a very stimulating panel here today. The panel is getting stimulated as a result. We appreciate all of this stimulation. It is particularly time consuming to be stimulated, I must say. We appreciate what you have been doing, and we hope you will be staying in touch with us as we attempt to draft some changes in the law that governs Congress.

I would like to bring the second panel to the table. Dennis Thompson, Professor of Political Philosophy, Kennedy School of Government, Harvard University; Norman J. Ornstein, Resident Scholar, American Enterprise Institute; and James C. Kirby, Jr., Professor of Law, University of Tennessee.

If the three of you would join us at the table. I think we will begin with Mr. Thompson, because I understand you have the most serious time constraints at this point, is that correct?

STATEMENT OF DENNIS F. THOMPSON, PROFESSOR OF POLITICAL PHILOSOPHY, KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY

Mr. THOMPSON. That is correct. We know where the panel is coming from, so proceed with caution.

Thank you for inviting me, you and your colleagues, to comment. I have a prepared written statement which I will submit for the record.

The CHAIRMAN. We appreciate your forbearance and we will put it in the record.

Mr. THOMPSON. I hope here to offer some thoughts. I have been asked to speak more broadly. I am not an expert, as you will soon discover, on detailed rules of the House. My comments are addressed to some of the broader assumptions and purposes of any effort to make ethics rules in politics.

First, just to comment about the importance of these efforts. A lot of people outside have complained that we are currently too preoccupied with ethics. We are paying too much attention to relatively minor transgressions.

While ignoring larger, more important public policy issues, arms control, budget deficits, drugs, many others. I don't agree with that view. I don't deny these are more important policy issues, more important than ethics but it is precisely because they are that the ethics have become so important.

I think we should view political ethics as necessary preconditions for making good public policy. Two kinds of preconditions seem to me worth stressing. They may be obvious, but they are the purposes of ethics rules, it seems to me.

The first is to protect the integrity of legislative judgment. If ethics rules are reasonably drafted and reliably enforced I think that increases the likelihood legislators and other officials will make decisions and policies on the basis of the merits rather than on the basis of irrelevant factors.

The second precondition or purpose is to restore or maintain public confidence in the legislature. Now, ethics rules give, should give citizens greater assurance that the legislators are making decisions on the merits and when citizens reasonably believe ethics are in disorder, we shouldn't be surprised disputes about ethics drive out discussion about public policy.

We have to pay attention to ethics precisely so that ethical controversies don't distract us from more important matters. It seems to me if you accept what I have said about what the purposes are of legislative ethics, then a number of implications follow.

I mentioned five or six in my written testimony. Let me just run through several of those.

The first implication is that we shouldn't expect legislative ethics to be like personal ethics. There is a lot of conduct that is wrong in personal ethics, certain sexual practices, for example, those ought to be normally regarded as irrelevant to political ethics.

And some conduct, this may be more to the point, that is quite praiseworthy in personal conditions, preferring your friend, giving them a favor, returning a favor, gratitude, those sorts of things, which we respect in our personal relations are exactly the opposite in political ethics.

And a lot of problems of political ethics, post-employment abuses, restrictions don't arise at all in private life and other conflict of interest aspects of that don't arise to the same form or to the same degree. That is why contrary to what former Representative Pike implied in his testimony here three weeks ago, we need to know, we need to say more about ethics than what we learned in kindergarten.

The second implication I want to mention, appearances matter ethically not just politically. There is a tendency to talk about them as if it is public relations or sort of a tool of getting re-elected.

I think that that is a mistake. In private life it is again a transferring of private ethics to public life which is a mistake. In the more personal world of politics, reality and appearances blend together in ways we can't tell the difference.

Not only can most citizens judge politicians only by what they appear to do, but for many citizens what politicians appear to do is what they actually do. That is the effect on citizens. So the reality and appearance don't have the same distinction, it seems to me, in public ethics as it does in private ethics.

The third implication. If you agree with my way of understanding legislative ethics. We wouldn't focus so exclusively on particular conflicts of interest, financial interest. The scope of legislative ethics ought to be both narrower and broader than that.

It should be narrower because we should not object simply because a legislator financially gains as a result of holding office. Our objections ought to be focused not on personal gain as such, sometimes we lose sight of that, but on the effect on legislative judgment, and citizen confidence.

That means, it seems to me, ethics rules ought to focus on appearance of potential influence rather than isolated or particular conflicts of interest. I say more about that in my written statement.

The fourth implication—there are only five—you can relax.

The preoccupation with financial interests is also too narrow. It seems to me Members who neglect their institutional responsibilities, who fail to carry their fair share of the burden of the common chores, who malign the institution without taking responsibility for improving it, all of these actions cause as much damage to the legislative process as financial conflicts or post-employment abuses.

In emphasizing—and I say more about this in my written statement—in emphasizing the ethics of institutional responsibility, I believe I am agreeing with the view of your colleague, Mr. Hamilton, who testified again three weeks ago that Members have to recognize that many seemingly small routine acts can undermine the basic perception of Americans about the integrity of their government just as much as front page scandals do.

Finally, the last implication I want to mention concerns the question of the enforcement of legislative ethics. Who should have responsibility for ethics enforcement?

A number of people have proposed the establishment of some sort of independent agency or commission that could play some role in providing advice about ethics rules. I am in favor of such a body.

I think one of the arguments in favor of it is that it follows from one of the purposes I mentioned of legislative ethics. Citizens are more likely to believe that ethics rules are being observed if such a body takes part in their enforcement than if the legislature tries to do it all by itself.

In an institution that by its nature is so political it is difficult to expect Members to completely set aside politics when they judge their colleagues, even when a committee acts as responsibly as the current Committee on Standards is doing in considering the case of the Speaker.

Partisanship is difficult to avoid or at least the appearances of it. I am not suggesting any committee can abdicate its constitutional responsibility for disciplining Members, but that shouldn't stand in the way of employing others to assist in that process in various ways.

Sometimes I think the rules of legislative ethics seem, and sometimes they are, mundane in content and rather negative and suspicious in tone.

It seems to me their purposes are not only important but also honorable, as important as the confidence of the citizens they are meant to sustain and as honorable as the vocation of public service they are trying to strengthen.

So I join with many others who like the members of this task force are working hard to improve the ethics of public life. I thank you.

[The prepared statement of Mr. Thompson follow:]

Statement of Dennis F. Thompson*

Harvard University

Bipartisan Task Force on Ethics

U.S. House of Representatives
Hearing on Congressional Ethics Rules

May 24, 1989

I thank you, Mr. Chairman, and your colleagues, for inviting me to comment on some of the issues you face in considering changes in the rules of conduct for the House. I come before you, as you no doubt know, not as an expert on the rules themselves, or even on the procedures of the House more generally. Rather, I am here to offer some thoughts from the perspective of a political theorist who spends his time teaching and writing about the ethics of various public professions, including the profession of politics. My comments are intended to address some of the broader assumptions and purposes of any effort to make and enforce rules of ethics in politics.

First, some comments about the importance of such efforts. Many people have complained that we are currently too preoccupied with ethics, that we are paying too much attention to the relatively minor transgressions of public officials, while ignoring the larger, more important problems of public policy (such as arms control, the budget deficit, drugs, and many others). I do not deny that in themselves these are more important problems than the ethics of public officials, but it is precisely because they are that ethics itself has become so important. Political ethics provides the *preconditions* for making good public policy.

Two kinds of preconditions are important – one dealing with the judgment of legislators, and the other with the confidence of citizens in the legislature. (They reflect the two main purposes political ethics.)

First, consider legislative judgment. Ethics rules, if reasonably drafted and reliably enforced, increase the likelihood that legislators (and other officials) will make decisions and policies on the basis of the merits of issues, rather than on the basis of factors (such as personal gain) that should be irrelevant.

The other precondition or purpose – restoring or maintaining citizen confidence – is related to the first. Ethics rules give citizens greater assurance that officials are making decisions and policies on the merits. If citizens have such assurance, they are less likely to raise questions about the motives of legislators, and are more likely themselves to concentrate on the merits of the legislation. When ethics are in disorder, or when citizens reasonably believe they are, we should not be surprised that disputes about ethics drives out discussion about policies. We need to pay attention to ethics precisely so that ethical controversies do not persistently distract us from other more important matters.

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* Alfred North Whitehead Professor of Political Philosophy in the Kennedy School of Government and the Department of Government; and Director of the university-wide Program in Ethics and the Professions. This Statement is based in part on *Political Ethics and Public Office*, published by Harvard University Press.

Legislative ethics, in its negative aspect, can be thought of as something like housekeeping: it is not as important as the other things we do in the house but if we neglect it we may find that we cannot do the other things as well, or at all. We need to keep our house clean so that we can keep it functional. The same could be said of this House.

If you accept what I have suggested should be the chief purposes of legislative ethics – to protect legislative judgment and to maintain citizen confidence in the legislature – then several other important implications follow. I want to talk about five of them today.

The Difference Between Personal and Political Ethics

The first implication is that we should not expect legislative ethics to be exactly like personal ethics. Unlike personal ethics, political ethics derives its value largely from its contributions to the making of good public policy. Since the importance of political ethics lies less in its intrinsic than in its instrumental value, its content will be shaped more by its political necessities than by traditional moral imperatives.

Some conduct that may be wrong in personal ethics (for example, certain sexual practices) should normally be regarded as irrelevant in political ethics, and some conduct that is praiseworthy in personal ethics (returning a favor, or giving preference to a good friend) may violate the principles of political ethics. Furthermore, many of the problems of political ethics (such as the issue of post-employment restrictions) do not arise at all in private life, and others (such conflict of interest) do not arise in the same form or to the same degree.

This is why, contrary to what former Representative Otis Pike implied in his testimony before this Task Force, we need to know more about ethics than what we learned in kindergarten. The ethical principles we follow and enforce in public life are bound to be more complex and therefore need to more explicit than those we carry "in our hearts."

The Importance of Appearances

Related to the difference between personal and political ethics is a second implication of the rationale of legislative ethics: appearances matter ethically, not just politically. Most everyone at least pays lip service to the importance of appearances (Caesar's wife, we are often told, must be above suspicion). But there is a tendency to think of appearances as merely prudential, as a tool of public relations, rather than as having any ethical significance themselves. In our personal life – in relations among family, friends and colleagues – we are not morally obliged to take appearances so seriously. The reason is that usually we can more easily get at the reality behind the appearance.

But in the more impersonal world of politics, reality and appearance blend together so that we cannot often tell the difference. Not only can most citizens judge politicians and political institutions only by what they appear to do, but also for many citizens what they appear to do is what they actually do. When a member accepts honoraria from interested groups, even if the member's judgment is not influenced, citizens may be justified – ethically justified – in believing, and acting on the belief, that the member offers legislative influence in return for money. Citizens have no way of finding out what the reality is, and therefore every reason to assume the worst.

Public officials, then, more than private citizens, have an ethical obligation to do all they can to make sure that citizens do not have any reasonable basis for believing that they and their colleagues are violating their own ethics rules. There is an ethical obligation to protect the appearance of propriety almost as great as to produce its reality.

The Limits of Conflict of Interest

Another implication of understanding legislative ethics in the way I suggest is that we would not focus so exclusively on particular conflicts of financial interest. The scope of legislative ethics should be both narrower and broader than concern with these kinds of conflicts.

It should be narrower because we should not object simply because a legislator financially gains as a result of holding office. There is no reason in principle (and no fair way in practice) to single out financial from the other rewards of holding office. Earned income per se should not be suspect. Book royalties, genuinely earned, surely should be acceptable. If Congress decides to ban all honoraria (a measure I would favor), it should be on the grounds, not that members should never receive pay for outside activity, but that such prohibition is at the present time the only practicable way to end the widespread abuse of what would be an otherwise acceptable practice.

More generally, we should not expect or desire to eliminate all conflicts of interest. Legislators serve as representatives, and this requires what James Madison called a "communion of interests" with constituents. The difference between a communion of interest and a conflict of interest is not always easy to discern, and it is not well captured by concentrating exclusively on personal gain or individual conflicts of interest. The individual member alone with his bank account should not be the sole subject of legislative ethics.

Our objections should be not to personal gain as such, but to its effect on legislative judgment and citizen confidence. This means that ethics rules should focus on *patterns* of potential influence, rather than isolated or random conflicts of interest. The rules might, for example, treat less seriously conflicts arising from larger financial holdings that are diversified than those arising from smaller holdings that are concentrated in specific industries. The rules could also set different standards for different roles in the legislature: they might, for example, grant the chairman (and perhaps members) of the committee on banking less latitude in their current holdings and post-employment dealings in that sector of the economy. Similarly, restrictions on dealings with persons who have a "direct interest" in legislation could take more account of the role that the member actually has in influencing the legislation in question.

A focus on patterns of potential influence would also draw attention more to conduct that adversely affects the legislative process as a whole. Some widespread practices, such as acceptance of honoraria from interested groups, might become an even more serious ethical violation than an isolated bribe or improper gift. Rather than being an excuse, the plea that "everyone is doing it" should strengthen the case against an individual member charged with improper conduct if the conduct violates a rule, and should strengthen the case for making it a violation of a rule if it is not.

The Ethics of Institutional Responsibility

The preoccupation with financial interests is also too narrow. Legislators who always use their office zealously to pursue the goals of single-issue groups with which they are associated may be, through their effects on the political process, distorting legislative judgment no less than those who accept contributions from special-interest groups.

Furthermore, members who neglect their institutional responsibilities in Congress, who fail to carry their fair share of the burden of common chores, who malign the institution and its members without taking responsibility for improving it—all of these actions may cause as much damage to the legislative process as financial conflicts and post-employment abuses.

In emphasizing the ethics of institutional responsibility, I believe I am agreeing with the view of your colleague, Mr. Lee Hamilton, who testified to this body three weeks ago that "members have to recognize that many seemingly small routine acts can undermine the basic perception of Americans in the integrity of their government just as much as the front page scandals do." The seemingly small but ethically significant violations that he cited included: distorting an opponent's record, using deceptive political advertising, misleading your constituents about the extent of your contribution to legislation, and irresponsibly charging that "the rest of the people in Washington" are engaged in "dirty politics."

I recognize that it may not be possible or even desirable to try to prevent all of these practices; doing so could interfere with ethically important and constitutionally protected rights. But that should not prevent us from formally stating such principles of conduct as ideals, or aspirational standards (as in the "ethical considerations" in the ABA code). Nor should we neglect the possibility that an ethics committee could issue criticisms of members for gross failures of these standards, even if the committee could not impose any other kind of penalty.

Another possibility to consider is authorizing the committee (or some other body) formally to recognize members with exceptional records in fulfilling their institutional responsibilities. This would go some way toward balancing the almost wholly negative character of our current ethics rules. We should care as much about honoring faithful legislators as condemning felonious ones. Rather than relying exclusively on punishment, we might consider depending more on reward. Jeremy Bentham, that diligent theorist of legislatures noted long ago that reward serves better to produce "acts of the positive stamp," and is more likely to be self-enforcing because officials have an incentive to bring forward the necessary evidence.

More generally, legislative ethics should attend to the moral responsibilities inherent in the multiple roles a member plays in the representative system. As a legislator, as an employer, and as a candidate, a member acquires many positive as well as negative obligations to many different people – colleagues in the legislature, officials in the executive branch, witnesses at committee hearings, personal staff and other employees of Congress, and opponents in elections.

The moral nature of these relationships, constrained as they inevitably are by political necessities, is likely to be complex. Some of these moral responsibilities cannot be formulated as enforceable rules, and some perhaps not as rules at all. But our legislative ethics should recognize that conflict of interest is not the only, or even the principal, ethical problem in legislative ethics, and that among the other important ethical duties we should recognize are those that call on members to fulfill their institutional responsibilities.

The Responsibility for Enforcement

The last implication I want to mention concerns the question of the enforcement of legislative ethics – specifically, who should have the responsibility for enforcement. If we keep in mind the purposes of legislative ethics is intended to serve, then we will reject two common views about the enforcement of ethics. Both are extreme, but in opposite ways: the first would leave the enforcement to constituents, and the second would limit it to the legislature itself.

First, consider the view that a member's constituents should be the only judge of his or her conduct. Some have argued that rules requiring only financial disclosure should replace the current elaborate set of prohibitions concerning conflicts of interest, gifts, and outside income.* On this view, neither the legislature nor its committees would have to judge whether a member is guilty of a conflict of interest or other ethical impropriety. The ethics committee would simply ensure that all the information for making such judgments is available to the public. Each member's constituents would, through the electoral sanction, enforce their own interpretation of ethical standards for members.

One of the chief attractions of this approach – in addition to its potential for simplifying the task of writing and enforcing any code of ethics – is that it seems more democratic. It appears to appeal to a delegate theory of representation that would hold members strictly accountable to their constituents.

This appearance is deceptive, however. A delegate theory of representation does not entail that only constituents in one district or one state should control the conduct of the representative from that district or state. On a delegate theory, constituents in *any* state or district may quite properly instruct their representative to seek, through procedures of the representative assembly, standards to govern the conduct of all representatives. The delegate theory, like any other adequate theory of representation, thus clearly recognizes the responsibility of each member for the conduct of all the other members.

Those who believe that disclosure is enough do not recognize the significance of this institutional responsibility. Rules requiring merely disclosure put other members of Congress – and all citizens who care about the moral health and political efficacy of the institution as a whole – at the mercy of the moral and political judgment of a few individual members and their constituents. This may be an appropriate form for representation in a convention (what Edmund Burke called a "congress of ambassadors from different and hostile interests"). But it hardly seems appropriate for a legislature, which is an ongoing institution that, like the United States Congress, functions well only to the extent that most members do their part in legislating honestly and maintaining public confidence in the institution as a whole.

The other view about enforcement – that the legislature should have exclusive control of it (at least between elections) – is more plausible. It is grounded in part on the Congress's constitutional responsibility to judge the qualifications of its members, and it also clearly recognizes the importance of institutional responsibilities in legislative ethics. Nevertheless, it should not be permitted to prevent us from giving consideration to some reforms that could help better fulfill the purposes of legislative ethics by broadening the responsibility for their enforcement.

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* E.g., Senator Lowell Weicker's resolution (S Res 109) (see Congressional Quarterly, *Congressional Ethics*, 2nd edition (Washington, D.C. CQ, 1980), p. 57).

One such reform would be the establishment of an independent agency or commission that could play some role in enforcing rules or at least in providing advice about them. Some members (as well as others) have proposed such a body.[*] It might be completely independent, composed of distinguished citizens (including former members, retired judges) who would be appointed for indefinite terms. Or it might be more like a service agency, perhaps modelled on the Congressional Budget Office. Or it might combine some of the characteristics of both.

In any case, even if the final judgment about disciplining members would have to rest with the House or Senate, such a body could help draft ethics rules, provide advisory opinions to members, issue reports (which might include criticisms and praise of members or at least of institutional practices). It could also take on some of the functions of enforcement, such as preliminary investigations and hearings, that are now wholly lodged in the ethics committees, and thus provide greater protections of due process for members accused of violations.

One argument for an independent body of this kind follows from one of the purposes of legislative ethics. Citizens are more likely to believe that ethics rules are being observed if some such body takes part in their enforcement than if the legislature tries to do the job all by itself.

There is another less noticed reason that tells in favor of some outside participation in the enforcement of the rules. Credibility is important not simply to make ethical standards effective; it is also necessary to make them valid. We should distinguish between two kinds of moral duties: (1) those that are valid whether or not anyone is observing or acting on them (for example, the duty not to injure others; or the duty to help others in distress); and (2) those that are not valid unless one have good reason to believe that others are also observing them (for example, the duty to pay taxes; or the duty to follow the rules in a game).

The validity of the second kind does not depend on everybody's actually fulfilling the duties, but it does presuppose the existence of some authoritative system to interpret and enforce them. Otherwise, individuals may reasonably claim that doing their duty puts them at an unfair disadvantage with respect to other people who are not doing their duty. Many of the provisions of any code of ethics for legislators are likely to refer to duties of this kind. That they are obligatory depends in part on each member's having reasonable expectations that other members will try to fulfill them.

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[*] E.g., Senator William Roth, *Congressional Quarterly Weekly* (April 2, 1977), p. 592; and the statement of Richard Preyer, prepared for this Task Force, May 3, 1989. Also see *Revising the United States Senate Code of Ethics, Hastings Center Report*, special supplement (February, 1981), especially p. 17.

In the absence of some credible form of enforcement for the body as a whole, any individual member may well have good reason to doubt the ethical force of (say) restraints on the use of the franking privilege, limits on outside income, or the prohibition of certain activities that appear to create conflicts of interest. This does not add up to an irresistible case for an outside body: the House and the Senate themselves may yet prove to be credible enforcers. But in an institution that is political by its very nature, it is difficult to expect members to set aside politics completely when they judge their colleagues. Even when a committee acts as responsibly as the current Committee on Standards has done in considering the case of the Speaker, partisanship is difficult to avoid. Members may welcome the help of an independent body, if only to assure citizens that their own judgment is not so political as it might otherwise appear.

The rules of legislative ethics sometimes seem (and indeed sometimes are) mundane in content and suspicious in tone. But their purposes are not only important, but also honorable—as important as the confidence of citizens they are meant to sustain, and as honorable as the vocation of public service they seek to strengthen. I join with the many others who have praised the public servants who, like the members of this Task Force, are willing to work to improve the ethics of public life.

The CHAIRMAN. At this point, I would go to Mr. Kirby for his comments.

STATEMENT OF JAMES C. KIRBY, JR., PROFESSOR OF LAW, UNIVERSITY OF TENNESSEE

Mr. KIRBY. Thank you, Mr. Chairman.

As you indicated, I am here because in 1970 there was published a report of the New York City Bar Association Committee on Congressional Ethics, of which I happened to be the Executive Director. That was a group of lawyers who had high level experience in government. I won't name all, but my favorite example is Cyrus Vance who had already begun his career in high level public service. We worked over two years under a Ford Foundation grant, interviewed 124 Members of Congress, talked to all the experts and came out with a rather comprehensive report, with 29 separate recommendations, some for legislation, some for congressional rules, some for self-enforcement by individual Members.

The basic thesis of our work goes back to a simple concept, and that is to apply the fiduciary concept. Who are the fiduciaries?

A guardian and ward, a trustee and beneficiary. Fiduciaries are those who by law are given a power, by law or consent, are given a power to be exercised for the benefit of another, not for self-interest but for the interest of another.

Fiduciaries, such as trustees, avoid even the appearance that they are in a situation where they are influenced by anything other than the welfare of the beneficiary. Ideally, there would be no influence on a Member of Congress, but the interest of a pure beneficiary, that is the collective public of the United States, the idea of public office as a public trust gave us our title, "Congress and the Public Trust."

That is not new. It goes back to Plato, public office is a public trust. We can't have that sort of ideal because Members come from the real world and return to the real world and operate with a much more varied and fluid set of beneficiaries and influences than any other type of public official or public trustee.

We also operated from one other more complex concept, that is the concept of conflict of interest. Conflict of interest is that which occurs heavily among lawyers who get caught with clients who have conflicting interests, heavily among trustees, like a bank trust officer, who have a lot of trusts they are administering with overlapping interests, but conflict of interest is anything that risks what Dennis Thompson described as the injection of an interest which impairs independent judgment, that risks integrity of judgment.

We surveyed the world of the Members of Congress and found there are certainly some unavoidable conflicts of interest. We can't have the pure, pristine trustee here we have in other fiduciary situations. Since you are all taxpayers, most of you are participants, you are home owners, you are bound to have some forms of investment.

You have some inherent and unavoidable conflicts of interest. Those must be tolerated. Perhaps disclosure is the only thinkable remedy for any possible problems in that area. But the great majority of situations raise what we call avoidable conflicts of interest.

Most of the situations of the problems that produced this task force involve avoidable conflicts of interest. Here is a term which cuts across the whole realm of all the things we are talking about, it is not just investments, it is not just family businesses, it is campaign contributions, it is honorariums, it is gifts, anything which may tend to create a feeling of gratitude on the part of the donee or beneficiary, anything which may communicate interest between a Member and outside party such as a business associate or a lawyer/client relationship.

The avoidable conflicts of interest, most of them, can be avoided. And most Members do avoid conflicts of interest that are available to them.

We said at least if they want to avoid them by divesting the interest, it is usually an interest that can be converted to cash and put into something else. If they don't avoid it, then it should at least be disclosed. Disclosure has been downplayed a bit here this morning.

As a remedy, I still think public disclosure is useful for what it is worth. What it is worth we can only guess because one effect of disclosure is to deter holding investments that would have to be disclosed.

Think of an Armed Services Committee chairman holding the kind of stock that gave David Packard that problem as Secretary of Defense. Most of you do quite well and do not have holdings that will create conflict of interest problems because there are other opportunities for your investments and employment opportunities.

One alternative was Jack Kennedy and Mike Mansfield's example of putting everything into government bonds. Occasionally, you are going to have to vote on government bonds, but it holds low potential for a narrow, invidious personal conflict and is one held in common with the great bulk of the public you serve.

The thing we dealt with at length which has received virtually no attention from Congress in the 19 years since we reported were conflicts of interest dealing with committee memberships. We studied several areas where congressional committee interest in things such as transportation, the defense industry, communications, banking, and it was in banking that we found the greatest problem.

We used to have a man named Wright Patman, who was chairman of the Banking Committee, was a thorn in the side of the banking industry. Over time the Banking Committee came under the dominance of Members favorable to the interests of the banking industry and that has produced untold harm to the public interest and weakened oversight of banking regulatory agencies and the consequences of such things as the savings and loan disaster. We will never know the full cost of that.

Mr. Obey earlier asked a question what greater conflict could you have than on voting on your own salary. I could think of several notable historic instances.

The great Daniel Webster served in the Senate while he was the principal lawyer for the Bank of America, represented them 41 times in the Supreme Court, and in a famous letter to Nicholas

Biddle, he reminded him legislation was coming up soon in which the bank would be interested and it might be best if his retainer were renewed or refreshed.

Mr. Kirby. More recently Senator Kerr of Oklahoma, Chairman of the Finance Committee, pushing bills to dredge the Red River for greater navigability in Oklahoma, at the same time holding interest through Kerr-Megee Oil Company in land on the Red River that would be vastly enriched by that public property.

Senator John Bricker, while he was Chairman of the Senate Commerce Committee, was also a member of a Columbus, Ohio law firm and at a time when he was blocking the Saint Lawrence Seaway his firm was representing the Pennsylvania railway. Bricker paid his salary back to the firm and the firm paid him an annual draw of almost double his congressional salary. Whose payroll was he on—the Pennsylvania Railroad?

There is an old poem I heard by the great Senator Paul Douglas. That was back when I worked for Senator Estes Kefauver, a man who attuned anyone into thinking public interest was the prime thing. The Senator said once in debate the law locks up both man and woman who steals the goose off the common but law let's the man loose who steals the common from the goose.

I think we are more worried here about stealing the geese in this concern with honoraria than we are with the common pie—those huge blatant conflicts of interest which give us ineffective legislation and sometimes seem to produce wealthy men from public office with unexplained causes.

We found, looking at the Banking Committee after the first financial reports, that 90 out of 435 Members, more than a fifth, had reportable investments in banks. Thirteen of those 96 served on the Banking Committee of the House. Seven of those 13 were officers or directors of banks. What remedy is there?

Someone said you want to populate the Banking Committee with bankers? Not necessarily. But I think divesture of banking interests and reliance on staff and past experience after divesture, for whatever expertise we have from those sources, even perhaps a limit of those on the Banking Committee who could hold these interests and let them be viewed as industry spokesmen. But banking and law practice turned out historically to be what we found in "Congress and the Public Trust" as the two most prolific sources of congressional scandal.

One of the first things Members of Congress did and Thomas Jefferson complained about was run up bank notes that were going to be taken over by the Federal Government. The Bobby Baker scandal which helped produce the Senate's first code of ethics was heavily involved in manipulations of banking by Members and staff.

One possible partial solution here is a proposal to eliminate all directorships. Here, like law practice, you have a situation where the Member takes on a fiduciary relationship to a client or several clients, as John Bricker did or in a directorship a fiduciary obligation to the industry.

It is amazing what banks expect of investors in terms of promoting the bank's interest to all their outside other associations. That is documented in "Congress and the Public Trust" too. On law practice we recommend strongly against and a majority of the Members who were lawyers gave up their practice.

In 1980 the number was down to about 15 in the House and five or six in the Senate but there is still apparently a significant number of private actual or pretended law practice by Members which violates the Bar Association's own professional codes of ethics for the most part.

The bar association says you shouldn't let a law firm carry your name unless you are actively and regularly practicing law. Some bar associations have moved against Members and got that stopped. As I said, I have thoughts on some of the other things that have been mentioned but I will hold those for questions.

Thank you.

The CHAIRMAN. Professor Kirby, you might be interested to know that when we were talking about enacting a statute together with the phantom pay raise that never materialized, we had considered doing away with the ability to serve as a director of a publicly-owned corporation. We did make a distinction between a family or small business that wasn't publicly traded.

We also had proposed to eliminate people earning income from professional occupations. If they were, for example, attorneys they would not be allowed to practice and that really cut indiscriminately across the board because we had some Members who were practicing probate or divorce law who were working in their spare time to earn their maximum outside income while others continued to draw from a law firm with which they were associated.

This is really somewhat a question of earned and unearned income but there is a distinction in terms of how Members operate within the professions. So many of these issues were on top of our mind. This, of course, was combined with the 15 percent limitation on outside earned income, which would have meant that all other income not specifically proscribed—and honoraria was one of those—would be allowed but only up to 15 percent of salary.

It is an interesting concept. But that does give you some indication of where at least some Members of Congress—and that was Mr. Coehlo, Mr. Cheney, Mr. Lewis and myself—had arrived in concert with the desire for a higher standard of income through congressional salary.

At this point I am sure our colleagues will be back shortly from the vote on the Floor and I will have to leave.

Norm Ornstein, it is nice to see you. I saw you last night on ABC's Nightline. You look fresh and prepared to do battle again today.

Mr. ORNSTEIN. Would you prefer to wait, Mr. Chairman?

The CHAIRMAN. I think it would be better if you waited and let the other Members rejoin us. That way we don't have to interrupt your train of thought and we will let them have a better appreciation of what questions they might want to ask.

I think I will recess the hearing and catch up with the throng on the Floor.

Dr. Thompson, we know you have to leave and we appreciate you being here and sorry we can't question you but we hope you will work with us as we go to the point of drafting legislation. We will read your very ample testimony.

Thank you.

[Recess.]

Mrs. **Martin** [presiding]. As co-chairman I will be asking the other Members what questions they would have. I apologize, Mr. Kirby, for leaving in the midst of your statement to go vote.

Mr. **Kirby**. I was glad to learn later that was the reason.

Mrs. **Martin**. That was the reason. Absolutely. It was a vote on the journal. We are all pleased to see with us an expert on the Congress. Often we read some of his statements and now we have him here in person, Norm Ornstein. Nice to have you here.

STATEMENT OF NORMAN J. ORNSTEIN, RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE

Mr. **Ornstein**. Thank you, Mrs. Martin. I listened with interest this morning and I followed with interest the hearings that you had. I concur with some of the things that have been said by some of the witnesses and by many of the Members.

It seems to me your major goal here is not simply to create a safeguard and maintain high ethical standards but to strike an appropriate balance. You want to do that without creating a climate or reenforcing a climate where no one in his or her right mind will want to run for public office or be in public life.

You want to get into or avoid a situation which concerns me a great deal, which I think would not be particularly effective for the country where the Congress consists entirely of Ralph Naders, Mother Teresas and a few Donald Trumps thrown in. That is worrisome to me.

Now, I do think that disclosure is the single largest remedy even though we have to recognize that disclosure has the ironic effect of worsening public attitudes towards government officials.

The more disclosure there is, the more the public is going to read about and hear about income, campaign contributions, connections with special interests and reenforce those tendencies. I think part of what you have to do is get your backs up and recognize that is simply going to be the case.

It is always the case, no question, every time there is an investigation of a public official accused of wrong doing that the reaction is well, we need tougher ethical standards. My reaction is this just proves that we have got a system that works when we can uncover those sorts of things and deal with them.

I am very concerned right now because I see a climate developing which is one where public officials are viewed as being guilty until proven innocent rather than the other way around. The assumption is developing that no relationship can exist between an individual and a public official that isn't illicit or questionable by definition.

I must tell you I was troubled yesterday watching the Committee on Standards of Official Conduct and listening to Mr. Phelan basically say that by his definition almost everybody has an interest in legislation and any gift with a value over $100 ought to be something that would cause one to pause. That troubled me. It frankly would mean you have no relationship where a friend would say, come up and stay at my weekend cabin for the weekend with me where the going rate was $500 a week without having to worry about what kind of trouble that would get you into, where you couldn't go to a dinner, such as one that I attended last night for the America China Society that probably had a value of over $100, without having to report it.

I don't think that is particularly healthy. I think if we continue to move in a direction where the assumption is that every relationship you have, every action you take is one that involves a conflict, and therefore has to be regulated, reported, disclosed, we move too far in that direction. We are going to create a set of burdens so onerous combined with the financial difficulties that now exist for people coming into public life that we are going to have a much worse problem than we have now recruiting and maintaining high quality people in those posts.

We have a problem now. It is, as the Volcker Commission suggested, a quiet crisis. But it is here and it is going to get worse. It is not that we will ever have a shortage of people willing to run for public office. It is a question of what kinds of people we get. I would reenforce the notion of caution here. Every time there is scandal or a perceived scandal the assumption seems to take place in institutions that you can dampen down the public outrage or build the public confidence by passing a new, extremely tough and stiff code.

The opposite is clearly true. Every time you do something, it reenforces the notion of difficulty and it is not going to dampen public outrage. You should do what you perceive as being right in striking an appropriate balance. Not with the expectation that it will quell public concerns and then take what comes with that.

I want to raise a couple of additional issues here in terms of recommendations first that flow from some of the things that were said this morning that have been said in the past. I have thought, grappled for years with the question of how Congress ought to police its own ethics, clearly your constitutional responsibility.

I have watched many distinguished Members of this committee and this commission and others serve on an ethics committee. A totally thankless task, very difficult role to get into. I also recognize this is not the sort of thing that can be done effectively or appropriately by somebody who has no experience in public life or public office, that it has to be done by people who are sensitive to the cross pressures that come at being elected officials or serving in this sort of position.

What I would recommend is a kind of variation of the Wilkey Commission proposal which is that the investigative level of ethical questioning be done by a panel of ex-Members and ex-staff, people who understand the institution but who have a distance from it, not by just some independent individual without that kind of a connection.

It seems to me that you could find a large number of such people who would be almost universally regarded as strong and tough and independent, people like Mac Mathias, for example, who would be able to strike that sort of balance. I have no problem at all with moving from a level where you have investigated and found reason to believe that charges have occurred, then moving into a tribunal that consists of Members, although even that is, of course, a difficult position to get in.

But that is something that comes with the territory. I think you would be better served though by moving outside but striking a balance in that sense. When it comes to the difficult questions of pay and honoraria I happen to be one who believes that honoraria are not bad. I do a lot of public speaking, a good deal of it pro bono, a good deal of it for honoraria, a good deal of it now, that goodness, for more than the maximum amount that is allowed for Members of Congress.

I probably have a conflict of interest. I would be better served if you eliminated all honoraria. People who put on meetings—and there are lots of them all around this country who want to get people to speak to issues of public policy—would probably end up turning more to me if they couldn't bring in Members of Congress.

Mr. OBEY. They could do worse.

Mr. ORNSTEIN. Thank you; and will in many cases too, no doubt. Clearly many of those and most of those come to me as they come to you because if you are conducting a meeting that is in New Mexico and you take a busy person and suggest that that person give up a day or two of his or her time to come out and give a talk to a group of people, that marginal time is extremely valuable and you are going to have to find a way to pay for that marginal time.

I believe that most of these sorts of things are not done as quid pro quo, they are done as transactions and I must say I get bemused and sometimes outraged when I see commentators who get $5000, $10,000, or $15,000 for a speech who rail about the conflicts of interest, but of course, assume they are not asked in ways that would involve any conflicts or any kinds of quid pro quo.

So I start with a belief there is nothing particularly wrong with honoraria, but I also believe when we begin to weigh these balances, the need for a pay raise for Members of Congress and top public officials is more significant. So I have supported the trade off.

What I would suggest to you is, as we move forward and we look for a way after the debacle earlier this year to get around this dilemma, is something close to the following. That is that we move for an immediate or at least quick 30 percent increase for high executive officials and judges and phase in a 30 percent increase over three Congresses for Members of Congress while at the same time phasing out honoraria a third, a third, a third, so that nobody takes a cut and you have that kind of a trade off.

Now, if I had my druthers, I would not clamp down on outside earned income of this variety in the way that has been suggested. I think disclosure is a perfectly adequate remedy by and large and where there are obvious abuses there are ways of taking care of them.

But under the circumstances, I think that this is probably going to be the most practical kind of way to go. Some variation of that where you do not decouple Congress from the other branches, but partially decouple and phase things in, I suspect is a workable formula and at least would give people a sense that there is light at the end of the tunnel and that something of this variety is occurring that will provide some relief. I happen to believe much needed relief.

So I would mull that one over or at least some variation to that theme. Let me just make one other point. That is I disagree with many of the people who testified here. I happen to think standards should and can be different for the three branches, now not entirely different. But the fact is elected officials are different. You are judged every two years or in the other body every six years by your constituents. That means that standards in terms of outside income or many other kinds of relationships that are occurring can be different than if you are talking about public officials who are appointed or who serve for life terms or longer periods of time.

I think a real distinction can be made in that regard. It doesn't excuse some instances where Congress excludes itself from other standards, not for those reasons but for convenience sake, but differences clearly exist. What follows from that, however, is that I would view the standards for Members of Congress to be different from those of congressional staff and congressional staff it seems to me ought to have to adhere to the same sorts of standards as executive branch officials.

They are appointed. They do not have the same sort of judgment rendered to them every two years and you have got to treat them a little differently. But I don't see in every instance why you have to say what happens with executive branch officials or judges has to happen in a identical fashion for Members of Congress.

So I would throw that one out at least. With that, I think, probably the best thing would be to stop and have some dialogue.

Mrs. MARTIN. Thank you very much, Dr. Ornstein. As someone who has shared a podium with you I can guarantee you the group got their money's worth and more.

Mr. ORNSTEIN. Thank you.

Mrs. MARTIN. I am not sure how you could fit many more speaking engagements in because you are noted for both your wit and candor and I think that does matter. You bring a more objective view than even we can have of the Congress as an outsider looking in. You don't claim to be an insider but I think that is of merit and we appreciate your testimony.

Rather than taking up time from the panel, I would rather turn to the other members. We will just go down in order. Please ask questions to either Mr. Kirby, whose experience we value too, or Dr. Ornstein.

Paul Gillmor, the gentleman from Ohio.

Mr. GILLMOR. I really appreciate that testimony. I thought it was excellent. I just want to ask one question of both of you and see if I understand Dr. Ornstein. Basically your position is if we have disclosure, we don't really need to worry about limits on outside earned income except maybe for the honoraria question, which is really more of a reaction to the public outcry, and simply let the voters judge. Is that a fair summation?

Mr. ORNSTEIN. If I had my druthers, I would have as full a disclosure provision as possible and leave it to the voting process to judge elected officials. Obviously, you have got to have some way of dealing with abuses, and you have got to have a system for judging and punishing under those circumstances. There are criminal laws obviously that apply to Members of Congress as they apply to everybody else in the society, and we have seen Members come under those laws and get indicted and convicted.

There are enforcement procedures you have now. I would like to see some of those procedures changed to take the investigative aspect of this outside. But having done that, if I had my druthers, I would not put limits on outside earned income. It seems to me that that is up to constituents to judge. If constituents believe that a Member of Congress is abusing his or her authority, is consorting too much with special interests to the detriment of the constituency, is spending too much time moonlighting, then that is something that ought to be dealt with in the electoral arena.

Now, let me say as an adjunct to that that even though it is not within your responsibility, I would feel better about that if we had a better system of campaign finance and recruitment to office so we could get better challengers in who could make these points and score some points. I have ideas in that regard as well. It is not the subject here. I would like to see better challenges, better competition.

Part of what concerns me here, frankly, is we are going to get the opposite. The more we go along and create burdens and disincentives all across the board, in terms of all kinds of standards that are set, and with a climate that says if you go into public life, by definition you are a crook, we are not going to get good challengers, electoral competition, and we are going to have the wrong kinds of people having a lock on public office.

I would rather go in the opposite direction.

Mr. GILLMOR. Let me point out there is an instance I know of, to follow up on what you just said, where an individual who would have been an excellent candidate for Congress, I know personally of one instance, simply did not run for the reason that you are talking about.

Mr. ORNSTEIN. It is happening more and more I think in both parties, and it is clearly happening in the Executive Branch and with Judges. We had reference to the article in the Post yesterday about top Executive officials leaving. We have seen that not just with procurement officials, but with NASA officials, health officials and others now. We know, at least I have been told by people now in and around the White House who are trying to recruit people in the Deputy Assistant Secretary posts and others that left, there is enormous difficulty getting people to come in. And we know that a good part of the reason that the administration is starting out slowly in terms of judgeships isn't just that they haven't got their act together, it is that they go out and canvass and try to find good quality people to come in as Judges, and they are having great difficulty.

That is going to be true of any administration coming in. It is not that you will never get people—we will always find candidates, we will always find Judges. The question is what kinds of people are we going to get, and what kind of incentives are we offering? We are not offering the right incentives now, and I don't want you to move in the wrong direction in that regard.

Mr. KIRBY. First, on disclosure, I said earlier I think it is valuable for what it is worth, which is uncertain. One aim of the Executive Branch is to get uniformity of forms for disclosure. That may be good in that it gives you a level field in terms of parity among the branches on how much you have to give up of your privacy to stay in public office, but they would be different in the logical relationship between what is in the forms and the duties performed by the public official involved.

Disclosure is not adequate as a remedy, though. Bob Kerr's interest in the Red River properties could have been disclosed and the Oklahoma people would have felt that is good for all of us. People will tolerate conflict of interest in a representative who has an interest that is peculiar to their State and let them get rich on it. They get rich on it too, and the rest of the country suffers.

I think we need a remedy along the line of disqualifying people from particular committees if they continue to hold interest in industries particularly subject to that committee.

Mr. GILLMOR. Let me follow up there. If I were to follow what you are saying logically, you would probably have to prohibit under penalty of law the President of the United States of owning any interest in anything. Certainly the President, on a matter of public policy, has more impact, I would think, than any Senator, Senator Kerr, or the chairman of a House committee.

I mean if it is bad for them, are you suggesting we ought to prohibit the President from owning anything? Because clearly he is in a position to do great evil.

Mr. KIRBY. The difference is the degree involved. You can't require people to dispose of all their worldly goods and give them to the poor as a condition of coming into public office.

There is a famous Governor of Louisiana before Huey Long who said when he took his oath of office, it didn't include any vow of poverty. He expressed an underlying thought that we can't expect the government to be run by economic eunuchs, or whatever, at any level. I think the idea of the President diversifying makes sense. Mutual funds are a great way to be sure your interests are broadly spread, government bonds is another possibility that Jack Kennedy used. I would use disclosure as a deterrence, rather than require people to divert particular interests.

Now it may be that this is preventing some good people from coming into public life. It was said when we opposed continued law practice by Members, this is going to cut down on the number of lawyers in public service. Well, the public wouldn't buy that in a minute. It is happening in State Legislatures, the number of lawyers is going way down. But in Congress they have been almost 60 percent to two-thirds of both Houses, and restrictions on permissible outside law practice, if any effect, would be probably a desirable effect on lawyers.

You can't believe all these bankers couldn't find some other place to put their money. There were two instances disclosed, one by Henry Gonzalez and one by a representative I knew personally, of a banker coming and offering to sell them stock in the bank on a note and the dividends in the bank would be sufficient to make payments on the note, so he ends up as part owner of the bank at no cost, on the Board of Directors, and maybe on the Banking Committee. That is just not necessary.

Mr. **Gillmor**. That is an interesting scenario, but that strikes me as being illegal now. You are basically saying, making an offer of a thing of value apparently for something in return——

Mr. **Kirby**. I come from Jake Butcher country and we have had a lot of bankers do a lot of illegal things. I am not sure it is illegal for the Congressmen because a note would be a valid note and enforceable. If he went bankrupt, he would have to pay it.

The other thing about outside income, I am not concerned with outside income from honoraria either, and I hate to see a situation where Members of Congress wouldn't go off to conventions, like the American Bar Convention, and participate in panels. I think it is as good for what Mr. Obey tells these people as it is for what they might tell him, other viewpoints he might not hear up here.

The outside employment that concerns me is where there is an employer with a continuing relationship. That is very different from an investment where you just collect income and you can always change it. Having an employer, such as a bank—I am limiting myself to banking perhaps, but there have been other instances of people keeping unnecessarily private business opportunities when they could have divested without great hardship.

Broadcasting stations are one thing that come to mind. But where there is an employer, there is, if not a fiduciary duty, an absolute human nature concept of loyalty that is apt to affect how he exercises his other job as a Member of Congress. Self-employment for painting, writing, I believe, could be distinguished by workable rules.

Mrs. **Martin**. The gentleman from Wisconsin. We will try not to keep you too long, but your testimony is evoking questions. The gentleman from Wisconsin.

Mr. **Obey**. Thank you.

Mr. Kirby, it is good to see you. I remember reading your book before we proceeded with our reform activities in 1977. And I think you have given most sensible comments here today. I do have a problem about where your suggestions about committee service would lead us. We looked at that in 1977. Common Cause at that time was pushing the idea that people should not serve on committees that dealt with issues they knew anything about. What I mean by that is that they were suggesting that it was troubling to have farmers serving on Agriculture.

I don't happen to think that is troubling, but they did. The problem is if you get into it, we could all identify the obvious problem that we would like to correct, but what about the subtle ones? Because how do we distinguish between a fellow who has stock in something we don't like? You come from my country, you don't like oil or gas. In my country, boy, we like milk. What happens if we have got somebody who is a very big dairy farmer? Does that mean he can't serve on the Agriculture Committee? Does it mean a guy who has been a teacher or run a teacher's union can't serve on the Education Committee? Does it mean that somebody who was a savings and loan executive and holds savings and loan stock can't serve on the Banking Committee?

The problem is you get into the practicalities that as laymen we need the specialized knowledge that people bring from their professions to this place or else we truly are irrelevant in society. So that is why in the end we decided not to pursue the question of trying to limit what committees people should serve on, because we felt that even though there is some danger to the institution when an unpleasant fact is disclosed, it was overridden by the troubling questions about where you draw those lines once you start down that road.

Mr. Ornstein, you mentioned the problem of disclosure. And this isn't a question so much as another comment. I think you are right that additional disclosure does ironically act to decrease public respect for the institutions. It shouldn't do that, but I know it does. I think what you have here is the Legislative Branch of government has virtually no political insulation. Other branches do, other walks of life do, and it is ironic that the more people know—I think one of the reasons people are suspicious of anyone in public life is they know more about them than they know about their doctors, more than they know about their lawyers, they know more than they know about their insurance agents. If people knew some of the conflicts which exist in some of these areas, people would be very disturbed about those, too.

I don't think we can correct the problem by reducing disclosure because obviously the demand is for more requirements. I get very suspicious of pure approaches to problems at this point.

With respect to campaign finance, I have a question, because I am so frustrated by it. God knows I have tried to move campaign finance through this place. The last bill that passed the House had my name on it. It limited PACs and some other things.

But why is it the public does not understand, and why is it that the press does not either understand or does not explain the fact that the condition of the campaign finance law today is not something designed by Congress, it was imposed on the country by a naive Supreme Court that equated money with public speech under the First amendment and, therefore, concluded that it was not possible to do the one thing the public wants done more than anything else in the public opinion polls: They want limits put on campaign spending. The Court said you can't do that.

How do you think we break through that lack of understanding so they can understand that if you pass the kind of bill that I have supported for years, that then leaves us an opening to what I am now told by PAC Directors is going to be the new name of the game—independent expenditures and behind-the-scenes direction of large individual campaign contributions, so that you have in effect very clearly laundered money.

Mr. ORNSTEIN. Of course, part of the problem that we have here is that there is a lot more news value in looking at—at least as, I think most journalists see it—in looking at PAC contributions and what they do and where they come from and what they are than there is in detailed explanations of where the campaign finance laws come from and what is going on.

Unfortunately, the same is true in a broader sense. There is not much incentive for journalists to look at what is happening inside the appropriations process or the budget process or the foreign policy process. You don't win a Pulitzer Prize that way. You win a Pulitzer Prize by finding somebody with his drawers down or things in his safety deposit box that don't belong there.

Now, there has to be some of that, and I must say, I have looked at, for example, what Brooks Jackson has done in the last several months, and I think it has been a marvelous job of investigative reporting, and it is one of the great values of a free press, but we have tilted in that direction, and we are not tilting back towards analysis.

When I look at the campaign finance problem now, given the realities, it also seems to me many of the reformers of the past who, in many respects, gave us a good part of the system that we have now, and who now decry the system that we have now, continue to have, I think, a false option to start with. That option is that the way to deal with this problem is to squeeze the money out of the system.

In fact, a good part of the problem is that we don't have enough money in the system, we don't have enough of the right kinds of money, but we don't have enough money. I don't see how, frankly, in a modern society, where a Congressional District is 550 or 600,000 people, where States can range upwards of 25 million people, where if you are going to get information or communicate about any kind of a product or an idea, it is going to cost a lot of money.

And there are ways of reducing the costs that individual candidates pay. I am all in favor, for example, of requiring television cameras to provide the lowest-cost time for candidates. In fact, I would be in favor of tilting it towards two-minute spots as opposed to 15-second hit-and-run spots.

I think that is constitutional and desirable. But, as I see it, what we have got to do is provide a way to get more money into the system, more of the right kinds of money, and make it easier for Members and candidates to raise money.

If I had my druthers, I would start with what the late Dick Conlon viewed with great passion, and I agree entirely, the former long-time Staff Director of the Democratic Study Group. You have to start with a 100 percent tax credit for small home State contributions.

I regret Common Cause, among other groups, oppose that, and ended up being responsible for its defeat when it was right there as part of the tax reform package. It seems to me if a Member or candidate can go out to a constituent and say, give me $100, it won't cost you a dime.

Mr. Obey. With all due respect to that view, and I loved Dick Conlon, but I very much disagree with that idea, because I think the way this society is structured, that builds a huge benefit into people used to working with accountants and lawyers and understand tax deductibility. I don't think in the slightest you would be able to raise very much money under a 100 percent tax credit from working people not used to working with those devices.

I do think you would very much benefit high-income people and well-connected people in the society.

Mr. Ornstein. I disagree with you. I think that is true for a deduction, I don't think it is true for a credit. Especially now, as you see poor people operating with an earned income credit, and you see a child care credit——

Mr. Obey. Do you know how many people don't take advantage of the earned income credit who are entitled to it?

Mr. Ornstein. I recognize there is a——

Mr. Obey. A large percentage, because people like that will never understand that it is there.

Mr. Ornstein. Over time, you could have a major effect there and broaden the base. I also would have a matching fund system for those kinds of contributions. And I would greatly raise the individual contribution limit to provide an opportunity for challengers to raise seed money.

I would like to bring more of that kind of money into the system if I can. Maybe there are other ways of doing it, and broadening it to working people. But what concerns me more than simply limiting PACs, is making it so that there is not an obsession with raising money in the way that Senator Mathias suggested, both for Members and to get challengers out there. But I am afraid we are now in a climate where the only thing that concerns the press when it comes to campaign finance is PACs.

If we simply eliminated PACs, we are not going to solve any problems. Many in the Republican Party who now favor the elimination of PACs I think are just simply wrong. That is not going to solve anything, it is not going to get good challengers out there, it is not going to make it easier to run. It doesn't do much of anything.

It has to come more with a broad-based change. But I think simply changing campaign finance laws isn't going to do it. We really do have a growing problem here that worries me greatly. We have had a few elections where we have had very few retirements, leading to all the talk about the permanent Congress. Part of the reason is that retirements always come in waves. We had a huge number in the seventies, and we are going to have another wave down the road.

Mr. Obey. Could I interject?

My son, who is graduating from high school, did a paper for his social science teacher on the differences between reelection rates and actual retention rates, going back to the Gulf of Tonkin. What he shows is that—and it is generally known, but I was interested to see him go through it anyway—in contrast to the so-called 98 percent reelection rate, for instance, 55 percent of the people here weren't here in 1979.

What he showed is that there is only one member of the Senate committee left in Foreign Affairs who was here when we had the Gulf of Tonkin Resolution, only three members of the Judiciary here when we had Watergate, less than half the members of the Energy Committee were here when we had the last energy crisis.

So what it shows, I think, is that in part, this institution has to keep learning lessons over again, because it has less institutional memory than people seem to think it has.

Mr. Ornstein. That is absolutely right.

Mr. Obey. The average tenure is 10.2 years, and a Senate member, 10.6 years. That is not a long time.

Mr. Ornstein. When I first came here, I could walk the corridors of this building and see an awful lot of Members on Social Security. I don't see many now. We are going to see a lot more turnover, I am convinced, in the next six or eight years. It is one of those natural things.

The question is where the next wave of Members is going to come from, and that is what concerns me. Are we going to get the right kinds concerns me.

Mrs. MARTIN. The gentleman from Louisiana.

Mr. LIVINGSTON. Dr. Ornstein, Mr. Kirby, I appreciate your testimony; it has been stimulating. Mr. Cutler came out with a proposition a little earlier that I would welcome your comments on. He inferred that there really is no problem with unearned income with respect to conflicts of interest, that the real problem is earned income. Those who dare to go out and earn income on the side are subject to the greatest abuses.

I would quarrel with that, and wonder if really what he was saying is that ethics standards are more appropriately leveled on those without money than those with money, and I just wonder if you can agree with that.

Mr. KIRBY. Well, I certainly thought at the time that that was a vast oversimplification based on a few examples. I do agree that investment income is different from earned income in one respect. It is subject to being shifted in order to get diversification and minimize conflict of interest.

Also, it doesn't command time. Earned income generally demands some of your time, and it is a fact claimed for most purposes, particularly when you are seeking a pay raise, is that this is a full-time job. Particularly law practice, as I said, and more and more serving as a director of a bank, those are paying $25,000 to $30,000 a year now, and bank directors are getting a high vulnerability to personal liability.

They had better spend time on it, and that has to be at the expense of Congressional service.

Mr. ORNSTEIN. There is one aspect in which I agree wholeheartedly with Lloyd Cutler, which is the best way to deal with that is to offer a rate of pay that is not leaving Members who have to buy houses in this outrageous real estate market, have a residence elsewhere, and have the kinds of expenses that come when you represent half a million people, worrying about how they are going to live. What ought to be a reasonable middle-class standard of life, that is what we ought to be able to provide for our representatives. That is the best way to go about it.

More broadly, though, I disagreed with what Lloyd said. I don't see that there is any more inherent conflict, other than the time that is taken, but outside earned income is something that is appropriate for constituents to judge.

If they think Members are spending too much time doing things that are not the people's business, they have a remedy for that, and here in this institution, they have one every two years.

Mr. LIVINGSTON. Thank you.

Secondly, there has been a lot of quarrel and concern about honoraria, and I have heard your positions on honoraria. Do you see any merit in distinguishing between types of honoraria, specifically those types of honoraria which are rendered for speeches to groups which do not have a direct interest in the types of matters that are within your direct jurisdiction?

That is to say, is there any merit in saying that honoraria are all right for Members of Congress who speak before a group that doesn't have a matter before their particular committee or subcommittee? Do you follow that?

Mr. ORNSTEIN. Yes. One of the things I would say more broadly, it is a slippery slope once you start to regulate these things, because just as with the Tax Code, fertile minds will find ways to abuse and get around them.

There are all kinds of ways to abuse loyalties. Creative minds can deal with that. We have seen that happen. There are all kinds of ways to abuse limits on honoraria. Let's say you said you could have honoraria from educational institutions, but not trade groups.

Then we would get Food Processors Educational Institute formed and they would offer you an honoraria. There is no way once you start down that slope, that you aren't going to get somebody finding a way around it, abusing it, uncovering it, and another firestorm.

If I had my druthers, as I say, I could see limiting the amount of any individual one. I think that is perfectly fine. And the $2,000 did not trouble me in the slightest.

I can see having the kind of disclosure of honoraria that isn't just limited to the name of a group: Citizens for Good Government, but that has something more, so you can make sure in your disclosure, you aren't getting a subterfuge there.

Mr. OBEY. That is the name of my campaign committee.

Mr. ORNSTEIN. Whoops. Sorry. And many other groups, no doubt. Some far more nefarious than your campaign committee. Once you start to make those kinds of distinctions, it is going to be as impossible as creating a pristine Tax Code nobody can deal with.

Mr. KIRBY. I think there is something to this as a possibility. Line drawing is always trouble, but you still have to try it. When Joe Biden came and spoke to the convention of the American Bar Association about the judicial nomination process he didn't talk about the Bork case at all.

It was one of the most educational things I have heard in my life. That is very different from a member of the committee considering whether automobiles should have air bags to go make a speech to the convention of automobile dealers.

Mr. ORNSTEIN. I would take issue with that a little bit. Right now, we have a controversy over the American Bar Association rating system for judges, the Judiciary Committee deals with that. There are all kinds of issues the Judiciary Committee deals with that are of direct interest to the bar committee.

Mr. KIRBY. A Senator does not have any interest in these. It is not going to affect anything he owns.

Mrs. MARTIN. As a member of the Rules Committee, under that rule, could one look at anything. Or a member of the Appropriations Committee, one could argue his interest covers everything. It may be very difficult to draw lines—as you described it, Mr. Kirby, a slippery slope. There again, we are used to putting on skis and trying to get through and that is what we are here for.

I thank you for making our job—I am not sure easier, but at least making it as important as this panel, both Republican and Democrat, believe it is. And in fact, you took your time without honoraria to come here. We appreciate it a great deal. Thank you very much.

Mr. **Kirby**. Thank you.

Mrs. **Martin**. We look forward to seeing the members tomorrow morning for the 8:00 meeting.

[Whereupon, at 12:15 p.m., the task force was adjourned.]

HEARING ON ENFORCEMENT PROCEDURES

WEDNESDAY, JULY 12, 1989

House of Representatives,
Bipartisan Task Force on Ethics,
Washington, DC.

The task force met, pursuant to call, at 9:20 a.m., in room 2359, Rayburn House Office Building, Hon. Vic Fazio (chairman of the task force) presiding.

Present: Representatives Fazio, Frost, Martin, Livingston, and Lewis.

The Chairman. Good morning. I call the hearing to order.

This is the third meeting of the Bipartisan Task Force on Ethics. Today's hearing is on the subject of enforcement of House Ethics rules. This is perhaps the most important matter that the task force will consider in its review of ethical standards and development of reform proposals.

The manner in which the House fulfills its constitutional duty to discipline Members for misconduct is fundamental to a strong ethics code and to ensuring the integrity of the institution. It is essential that our internal procedures guarantee effective and impartial enforcement of the ethics rules, while protecting the basic rights of the Member under investigation.

The purpose of today's hearing is to review the disciplinary procedures of the Committee on Standards of Official Conduct and to examine proposed changes in the enforcement rules.

We will focus specifically on some of the concerns that have been raised over the years about the current process. One of the most common criticisms is that the Ethics Committee acts as both prosecutor and jury in its disciplinary proceedings. Many believe that separation, or bifurcation, of the investigative and adjudicative functions is necessary to assure that the process is fair and protects the fundamental due process rights of the accused.

Other issues that we will address including the following:

Under what circumstances should the committee begin an investigation? What burden should be placed on the complainant? Should the Member have the right to obtain access to relevant materials in the committee's possession?

What due process protections should be afforded the Member under investigation? What standard of proof should be required? Should there be a statute of limitations with respect to past offenses? Should there be a set time frame for the committee to complete an investigation?

Should the rules prescribe a series of specific penalties or sanctions for various offenses? Should the Member have a right to counsel on the House Floor? Should the function of issuing regulations and advisory opinions interpreting ethics rules be separated from the function of investigating violations of those rules?

These are difficult questions and there are no easy solutions to the problems they raise. As a member of the Ethics Committee, I have wrestled with these issues over the past several years. While in general I believe the committee's procedures function well, I fully appreciate the concerns that have been raised by Members who have gone through the process, and I recognize that improvements could be made to afford a greater measure of due process to those charged with misconduct.

For the record, I would like to acknowledge the work done on this issue in the 96th Congress by a special Democratic Caucus committee chaired by Representative Don Edwards. He testified at our first hearing on the recommendations they proposed. We appreciate having the benefit of their comprehensive study and analysis of House ethics procedures and historical precedents.

We are very fortunate to have as our witnesses today two highly respected attorneys who have had direct experience in Ethics Committee disciplinary actions: John Nields, who was Special Counsel during the Koreagate investigation; and William Oldaker, who was Speaker Jim Wright's attorney.

We appreciate your taking the time to share your thoughts on these issues with us this morning, and we look forward to your testimony.

But before I yield to you, I would like to ask my co-chairman, my good friend Lynn Martin, if she has any comments at this point.

Mrs. MARTIN. We welcome the witnesses today, and look forward to their testimony. This is a difficult process that we are now examining. We welcome attorneys who have been involved in the process giving their best judgment on ways to improve enforcement procedures for Members of Congress. But more importantly, and I think all of this panel agrees, so the public continues, and in fact, increases its belief that this Congress can effectively enforce rules on the ethical behavior of its Members.

We welcome your testimony.

The CHAIRMAN. Bob Livingston is co-chairing with Lou Stokes the task force working group on this issue. Bob, do you have any comments that you would like to make?

Mr. LIVINGSTON. I welcome the witnesses. I think that, by and large, we have a process that has shown that over the years it works, but there is always room for improvement. I found some deficiencies that I feel we need to address, and I am anxious to hear the comments of the witnesses to see what they think.

The CHAIRMAN. I would say, at this point, that we are looking to Lou Stokes, who chaired the Ethics committee, and is a member of this panel, for a good deal of guidance on this matter. However, this morning he is at a mark-up on Health, Human Services and Labor Appropriations, and will try to monitor this through staff.

So, without further ado, John, we welcome you today, and look forward to your comments.

STATEMENT OF JOHN NIELDS, JR., ATTORNEY AT LAW, HOWREY & SIMON

Mr. NIELDS. Thank you very much.

I have only very brief remarks to make by way of introduction, but I will do that and hopefully be useful in terms of answering questions that the Members may have. I worked for the House Ethics Committee, as I guess has already been said, during the Korean influence investigation. That investigation lasted virtually a full term of Congress, two years.

I guess I should say, just by way of background, the allegations were that various officials of the Korean Government and Korean nationals had paid inappropriate amounts of money, or money in an inappropriate manner, to Members of Congress in order to gain a legislative advantage for Korea.

After about 18 months of investigative work, the committee brought disciplinary proceedings against four Members. In each case, there was a disciplinary trial. The committee found that the charges had been proved in three of the cases, and found that the charges had not been proved in one of the cases.

In one of the three where they did find the charges sustained, they found, as I recall, that only one of several charges were sustained and rejected the others.

From the point of view of a person like me coming from the criminal process, which is where I have had most of my experience up until that time, the thing that struck me most was that the jurors in these trials frequently didn't appear for the trial.

We adopted a rule for the purpose of that particular investigation and those particular series of trials that no evidence would be taken at the actual disciplinary proceeding without the presence of at least five members of the committee, the committee obviously being made up of 12.

And frequently, it was difficult to obtain the attendance even of five. There were days when hearings that were scheduled to begin at 10 didn't begin until 11 or noon, and sometimes, I believe on at least one occasion, we had to put a hearing over for a day.

It seemed to me——

The CHAIRMAN. John, you are not talking about depositions now, you are talking about the trial?

Mr. NIELDS. The disciplinary trial. And I should say that when the Member who was the subject of the proceeding actually testified, there was a greater effort, I think, made to attend. But even then, we did not have a rule that required full attendance.

The committee did require full attendance at summations, which were adjourned until after transcripts were prepared and exhibits collected, so that the Members could at least in theory read all of the transcripts and the exhibits, and listen in full to the arguments of counsel on both sides.

And they did attend those, and I believe very conscientiously, and then went back and voted and rendered the decision of the committee. But it seemed to me then, and it seems to me now, inappropriate for an adjudicatory trial to occur out of the presence of the members or of the jurors, in effect the adjudicators. That is one thought. I will come back to it in a minute.

Recently, as the chair has already indicated, there have been a lot of questions raised about the fact that under current procedure, the charging function and the adjudicatory function are in the same body.

I must say, at the time of the Korean influence investigation, when I was working for the committee, that didn't give me any pause. I don't recall it being an issue that anyone raised, and everything seemed perfectly fair from my point of view. If I had a subjective view at the time, it was that I was worried about bias in favor of the subjects of the proceedings rather than against them.

And to some degree, I think that the proceedings bear out that a committee can be fair even if it is the same committee that filed the charges, because as I indicated, in one case, the Member was exonerated, and in another, a number of the charges were rejected.

Nonetheless, having looked at it now from the other side, I have come around to the view that it makes more sense to have the charging function and the adjudicating function separated.

Again, relying on the criminal model with which I am familiar, of course, in our criminal procedures, the charging function and the adjudicatory functions are separate, and if anybody suggested that they be put together, I think almost everyone involved in the criminal process from both sides would have a heart attack.

It seems to me that the undesirability of having the charging function and the adjudicatory function in the same body is particularly acute where the charging decision is the subject of an enormous amount of press scrutiny, with the attendant risk that those who are forced to defend their decision to charge will become especially associated with that decision.

It is also particularly difficult, it seems to me, when the investigatory function is also mixed in there. Although the committee that I worked for maintained a certain amount of arm's-length relationship with the staff that I was running, and that was conducting the investigation, the fact of the matter is that the Members were involved with the investigation. It was their investigation. We were their employees.

It seems to me there is both a real risk and at least an appearance of a risk that those who have made the decision to bring the charge will be more inclined to vote that the charges have been sustained than would some other body.

What seems to me to be a possible solution to both of the members that I have indicated, would be to leave the present committee structure as is, with only one change, and that would be to empanel in some appropriate fashion a jury of, say, six members, three from each side of the aisle, to hear the actual trial of any disciplinary charge.

That would keep the number relatively low, so that only a few people would be taken away from their normal legislative functions. And some kind of accommodation would have to be made for those people so that they could attend the trial from beginning to end.

My guess is that the number of disciplinary investigations will be larger than the number of cases in which charges are filed, and the number of cases in which charges are filed will be substantially more than the number of trials. And if it were done in this kind of a fashion, you would end up with an unbiased jury.

I am referring now to the six-member panel that would hear the disciplinary proceeding as a jury. You would probably also be able to deal with the very difficult—and I recognize it is difficult—problem of having Members of Congress who have very important other functions to perform, give the time commitment required to actually sit as jurors in a very important disciplinary proceeding.

I have one other thought I would like to share with the members of this task force before I complete my opening remarks. That is that the focus on the procedures that surround the trial can distract us from the fact that by far the most important function that is done in this ethics process is the charging function.

I think both from the point of view of the Member, from the point of view of the Congress, and from the point of view of the public, the decision whether or not to bring charges will be the most significant one.

I might add parenthetically that that is regarded as true even by criminal defense lawyers in defending a client under investigation. It seems to me, given the publicity focused on the decision to bring charges, that is even more true of a Congressional disciplinary proceeding.

And the risk at the charging phase is the opposite of the risk we have been talking about here. The risk at the charging phase is not that the process will be skewed against the Member, I believe, it is that the process will be skewed in favor of the Member.

It was a conclusion that I and others drew during the two years that we worked on the Korean influence investigation, and I think it was a correct one, although, of course, you would have to ask the Members themselves.

The job of having to investigate and bring charges against your colleagues, and in many cases your friends, certainly your acquaintances, is a miserable, miserable job. I would not like to do it with respect to my law partners and my partnership, and I can't expect Members of Congress to like to do it with respect to their colleagues in the House.

I think it may even be fair to say that we never would have been created and never would have been put into existence, and by "we", I mean the staf, that conducted the investigatory work, if it hadn't been for the press.

I also think that it is too much to ask that permanent staff, who are dependent for their present and future employment on the Members that they are supposed to be investigating, do a truly vigorous job of investigating, possible violations of ethical rules by Members of Congress.

The history, I believe this is true, of ethical investigations and proceedings is that they begin when the press makes a big enough commotion over some issue relating to some Member, and at that point, a Special Counsel or some outside person is brought in to conduct the investigation.

I am sure there have been exceptions, but I think that is the model we are dealing with. It means that Congress has ceded the most important part of the process to the press, and it seems to me that is bad for the Congress and bad for public perception of whether the Congress is truly interested in assuring its own ethical standards in its own institution.

I am not certain I know what the solution to all this is, but it might be worth at least considering having a kind of Special Counsel selected not for one investigation, not to look at one person, but to serve the committee for one term of Congress. A person who would not have his future dependent upon whether he or she is liked or disliked, or his job is done well or poorly in the eyes of the Members, but somebody who would be there to serve the committee, to conduct whatever kinds of investigations may come to the committee's attention.

I think that might serve to increase the public perception that things were being done well, and I think it might also create the reality while still keeping with the committee, with this body, the very important job of making the final decision whether charges ought or ought not to be brought.

That is all I have by way of opening remarks, and obviously, I stand ready to answer any questions that the Members may have.

The **Chairman**. Thank you, John. We will have a number, I am sure.

Bill Oldaker, welcome.

STATEMENT OF WILLIAM C. OLDAKER, ATTORNEY AT LAW, MANATT, PHELPS, ROTHENBERG & EVANS

Mr. **Oldaker**. Thank you, Mr. Chairman, and Co-Chair Martin.

Over the past three years of working with the committee and watching its processes, I have formed some strong views on the committee and its enforcement procedures.

Today, I will limit my comments to procedural aspects. But before I start, I think that I concur with John. I think that it is a thankless job to serve on the Standards Committee, and from what I have seen, the people who have served have done an excellent job. They have all been honorable and worked hard and put in extremely long hours.

At the end, I will make a suggestion as to how attendance might be improved to a certain extent. Although in the cases I have been involved in, while attendance at times was an issue, I do not think it had any impact on the case at all. I think that Members were able to read transcripts and to get up to speed fairly fast on the issues.

I think that the first issue, and in my mind, one of the most important issues, is the issue of bifurcating the system. It impacts, I think, not only as to the second stage of the process, the trial phase of the process, but it also has a substantial impact on the first stage of the process.

I think that the committee itself should be left as it is and a new institution set up, whether it is a rotating system of jurors, whether it is six or eight. Eight is, I guess, the number proposed by Mr. Murtha in 1980.

Whatever system it is, I think that this then creates a tension between the first system and the second system so that more thought necessarily will have to go into the specifications and the charges as they come out. I think that is healthy for the process.

I think I agree with John that the most important thing in the process, though, is whether or not the Committee on Standards brings charges, and that is, as we have seen recently, oftentimes sufficient to raise enough public speculation to create an end unto itself.

I think that knowing that, and knowing that Congress is somewhat different than either our civil or our criminal judicial process, that Congress, when it looks at this, and this committee when it looks at it, should not draw analogies very rapidly between our civil and criminal system, but should look at this as a Congressional system and look at this preliminary process from that view.

I think that one of the things that I have seen is that because of the analogy between the grand jury and the parliamentary inquiry, many things have been crafted on to the parliamentary inquiry phase, such as absolute secrecy, that includes secrecy from the respondent. I think that that has a detrimental effect in that when the respondent Member has no idea what the evidence is that is being presented, it is very difficult for that Member to make a decision as to what his options are.

I think that in this process, the Member should always have the ability to make a determination as to what the evidence is and what his options are at every stage of the process.

So, the first suggestion I would make is that the Member or the Member's counsel be allowed to be in attendance at all discovery done by the committee. I do not see what detrimental effect that might have. It would grant due process and allow the respondent to know what information was coming in.

I do not think that the respondent Member should have an opportunity to delay in any manner, but his mere attendance, mere knowledge of what is being said and what evidence is being taken, I think would be best for all parties.

Beyond the testimonial evidence that comes in, I think that the respondent should have a right to all exculpatory evidence whenever it comes in. The committee's staff or the outside counsel, as Mr. Nields suggests, should make that determination as rapidly as possible and turn over all exculpatory evidence without motion to the respondent.

An issue which I realize is somewhat sensitive in any committee context in Congress is a question dealing with ex parte contacts. Ex parte contacts at least arose some years ago and were dealt with on the respondent's side, and I think that respondents now, and respondents' attorneys, are sensitive to the ex parte issue.

I think that the committee, I don't know that I have an answer to this, but the committee should review the question of ex parte contacts by the staff.

Now, I agree that the staff must advise the committee on a number of issues, but I think when factual presentations are made to the committee, looking towards bringing charges against a Member, in all of those cases, there should not be ex parte contacts. I think that, and this is one place where I disagree with Mr. Nields, I think that it is possible in those cases that the committee could gain a distorted view if it is constantly only hearing one side of the story.

That is not to say that anyone would have any malevolence in it, but both sides form their views and form their views strongly. So I would suggest that an ex parte rule which would apply to both sides be studied. It wouldn't have to be applied in all circumstances exactly the same, but I think it should be looked at.

Mr. **Livingston**. Excuse me. Does this relate to your statement about the need for respondent's counsel being present at discovery? Are the two related? Are you saying that respondent's counsel should be present at all factual presentations to the inquiring board?

Mr. **Oldaker**. Correct. There may be procedural issues that the committee may want to discuss with its counsel on an ex parte basis. Whether it is going to subpoena X, Y, or Z witness. Which way the case is going to go. I would look at that separate from a factual presentation on the case.

Mr. **Livingston**. Okay.

By ex parte, for the laymen on the board, you are referring to single, non-contested contact, is that correct?

Mr. **Oldaker**. Exactly.

A final issue would be the timing. Preliminary investigations, at least as far as I have seen recently, and I haven't had an opportunity to look at that great a number, have managed to expand almost to the time allotted to fill.

And I understand that. That is true with all types of litigation. I would suggest an absolute deadline be set for the preliminary inquiry stage of possibly six months. It is a reasonable amount of time. Congress serves only two years in length. I think it would best suit Congress to finish all investigations and trials in the Congress in which they arose and not have them carried over to a second Congress.

The last point on the preliminary inquiry stage would be the standard of proof that is used. Currently, the standard of proof to move the parliamentary inquiry stage to the trial stage is "reason to believe." Reason to believe is an administrative standard. It is used in many administrative agencies. It is usually used as the threshold as to whether or not to investigate a matter.

In this case, as Mr. Nields points out, it may be the most important decision the committee is in fact making. It should not be a low threshold.

Now, I don't think the threshold should be so high as to be impossible to meet by the staff or the committee. But I think it should be a threshold similar to probable cause or a higher standard that has some definition.

The problem with the reason to believe standard is if you look at most judicial interpretations, it means merely a scintilla of evidence leading in that direction. It is the lowest standard of proof, and very little guidance is given to the committee on that.

Let me discuss now the disciplinary stage, which I think should be looked at as an entirely different stage and a different panel. Whether that panel is selected by lot or is a permanent panel for a Congress or the year, I really do not know, but I think it should be a separate panel.

At that level, other than the points I have made concerning access, there should be rules in the trial stage which are fairly clear and spelled out; rules of procedure.

So, some procedural safeguards, they don't have to be the same as for civil procedure. But I guess as a model, we could look at the Federal Rules of Civil Procedure and evidentiary rules, which would be similar. I realize that by their nature, evidentiary rules do not necessarily have to apply to any of these hearings.

I think, though, as a matter of basic fairness, because many of the Members who will serve on the committee are not lawyers and the distinction is oft-times difficult to make between what is the weight of evidence, what is hearsay, not hearsay, there should be some attempt, maybe not with the same protection that we see in court, but some attempt to limit evidence and to allow only the best evidence to come in.

The standard that is in effect right now, "clear and convincing evidence", should remain. I think that is a proper standard. Also at this stage, the ex parte rules on both sides should be extremely strong. I would think at this stage, there is very little reason that the staff or the outside counsel should be having ex parte communications with the committee. It is much more like a judicial setting, and should be treated much more like a judicial setting.

One of the issues that I do not quite have an answer for is the question of how rules are interpreted during the process. It is a problem that I faced in recent cases as to the breadth of interpretation that the committee or the committee staff or the outside counsel may have taken.

It is very difficult even for judges at times to look at a law or a regulation and make an interpretation, especially when there is no appellate process from that. One suggestion which has been made, and I am not totally comfortable with it, but I will pass it on, is that an appellate process be set up on rules, and the appellate process would be to the Rules Committee or a sub-panel of the Rules Committee on particular interpretation of rules.

I do not know that that is the answer. But I do know that it is a problem. I think the committee should recognize it as a problem.

A final issue on process is that one of the things in our civil system of justice and in our criminal system of justice is an opportunity to dispose of cases on a summary basis at all stages. And I think that those rights should be spelled out.

So, the right for a motion to dismiss or a motion for summary judgment should be allowed at both the preliminary inquiry stage and at the later process, and it should be heard before the matter is decided upon.

It is currently allowed after the preliminary inquiry stage but not during the preliminary inquiry stage. The reason I suggest that is that you could apply the higher level of proof in a motion for summary judgment at the preliminary inquiry stage by filing a motion for summary judgment if all of the facts were not contested.

I think that is important in these cases to allow the committee to make the earliest possible determination in these matters.

Let me shift gears for one minute and go to two separate topics. The statute of limitations. I realize it is very difficult and will be opposed by some people, but in basic fairness, because of the age of records, the failure of memories and the changing of staff, I think a statute of limitations has to be imposed. What the length of that is, I have no idea. I would suggest a statute of limitations of six years would not be unreasonable.

Let me turn to another issue which doesn't deal specifically with these rules and would require a statutory amendment, and that is civil enforcement of the Ethics in Government Act by the Department of Justice. It is a matter which has recently come to my attention, and I think it is a matter which should be of interest.

The Department of Justice is currently of the mind that it may file civil enforcement actions after the Committee on Standards of Official Conduct has finally acted and made a determination. Once it has made a determination of reprimand, the Department of Justice believes that it can then use that record and file a civil enforcement action.

It seems to me that was not the intent. I think that in cases, and I am only talking about civil enforcement, not criminal, in cases where the committee does not act, it would be appropriate for the Department of Justice to act and to bring a civil enforcement.

But it seems to me that once the committee has made its determination and rendered its verdict, nothing is to be served by having a separate civil fine being levied by the Department of Justice.

Let me touch one other area, and then I will close. That area is that Members I know have a very difficult time in juggling their time between the committee and Floor votes. I don't think there is any rule that should mandate Members attend because of the various pressures on Congress. But I think a rules change could be made which would allow the greatest leeway to the Members to decide.

I would suggest that the Members, when they are attending the Committee on Standards, be allowed to vote present, in any committee or on the Floor, without actually attending the Floor to vote and that that be a specific rule change. I think that could be done.

That would allow Members to make the decision of whether they were going to leave for quorum calls and other types of routine votes and not be required to leave the committee.

I have a number of other thoughts, but I will leave those until later.

Thank you very much.

The CHAIRMAN. Thank both of you. There are a number of questions that were outlined in our earlier statements, and I know you haven't had time to touch on all of them, but just let me ask another one that I think is rather sensitive and grows out of a concern that the actual trial or penalty phase, I guess you might call it, on the House Floor has become somewhat of a circus on occasion and not the kind of judicious consideration of fact that we would like it to be.

Do you think it is appropriate to have counsel on the House Floor representing the respondent? John?

Mr. NIELDS. I do. It just seems to me that in fairness, there are certain things that argue for that. First of all, your Member may or may not be a gifted speaker. Most Members are. But he may not be.

More importantly, it seems to me that it is appropriate in this kind of a proceeding for a Member to be able to have an advocate speak for him. That has proved useful in every other kind of adjudicatory proceeding that we have in our judicial system, and it seems to me in fairness, it should be extended to a Member of Congress.

I don't think, and I don't understand that this is the case, but I don't think that it should turn the Floor proceeding into some kind of an evidentiary proceeding. It seems to me that that is undesirable and unfeasible.

The basic adjudicatory decision, it seems to me, has to be made by the committee or by whatever body sits as jury, actually hearing the evidence and trying the facts.

But the full House has an interest in the matter, and it is, although maybe a difficult and necessary part of the process, to have the full House either endorse or decide not to endorse what the trier of fact has decided.

I think in that process, arguments will be made on both sides, and a Member ought to have the privilege of having his made through a lawyer.

Mr. OLDAKER. Mr. Chairman, I have thought about this, and it is a matter that troubles me. Although I think I would probably disagree with Mr. Nields. I think that Congress is a distinct institution, and I think that there are methods where a Member can have another Member represent them on the Floor and argue their case.

If there are minority views on the committee, those Members, of course, would be arguing those on the Floor. I think that because speech and debate, which is the essence of what we are talking about here, is so constitutionally rooted, I would be hesitant to recommend that lawyers be allowed to argue their cases on the House Floor.

So, I would be reluctant to make that recommendation.

The CHAIRMAN. Thank you, Bill.

Lynn?

Mrs. MARTIN. Yes. John, when you are talking about bifurcating the committee you are talking about the first part of the process, the non-trial process, to be performed by the committee, and then you are talking about having a number of Members selected at random from the entire House rather than from the committee.

Mr. OLDAKER. Yes.

Mrs. MARTIN. So you are saying the committee would only have one role, not a trial role. And if I could ask you a couple of questions, and there will be questions from Members on the committee. When you were talking about the changes you would like to see for Members' counsel, are you also suggesting that that counsel have the right of questioning when they are taking depositions from witnesses, or just be present?

Mr. OLDAKER. What I am suggesting is presence.

Mrs. MARTIN. So no right of questioning?

Mr. OLDAKER. In addition to that, the right to question if they wish to separately depose these individuals. Right now, the way the process operates, and it is unbeknown to most people and most

Members, is that once that individual is questioned by the committee, they are basically locked up. They cannot talk to the respondent Member's counsel and tell them any of the evidence that they know.

And I don't think that was the intent.

Mrs. **Martin**. So in the first meeting, if you will, the first meeting of discovery there would be just a presence and there would be, I assume if you, being counsel, wanted to meet with that witness further, that would be notified to the committee, too.

Mr. **Oldaker**. Exactly.

Mrs. **Martin**. Secondly, in that same area, the committee has chosen, I would argue wisely, to really not comment to the press. Now you can talk about leaks, but in general, I think the committee was fairly impressive. If Members' counsel is allowed to be at discovery, would not there have to be the same limitation of speech on that counsel as there is on the Members, and how could you enforce it?

Mr. **Oldaker**. I think that is difficult. That is the reason that there has been some limitation. It is very difficult to limit the speech right of a third party under the Constitution, if not impossible.

Mrs. **Martin**. So even in the press, I think you are arguing too much of an inlet process. There would be only one side being exhibited, but it would not be the side necessarily, to go back to what John was saying, of sort of public view, the non-Member view. You would only be getting the Member's point of view.

Mr. **Oldaker**. I think that if the individual Member or his counsel were to speak to the press, I would think that at that point the committee could lift the whole veil of secrecy, and that would be the enforcement mechanism that the committee would have.

Mrs. **Martin**. If they waited, though, until discovery was over but before hearings, internal hearings began, you would have no stick.

Mr. **Oldaker**. Well, you would still have some stick. You could place all of the folks on the public record. I understand the problem, but I think that the other side, the balancing side and the lack of information, the inability of the respondent to determine what the facts are in the case, overrides it. In fact, what happens here is the respondent cannot interview any of these people.

It is not like a civil or criminal proceeding because the individual witnesses have been admonished not to talk to anyone about their testimony under the threat of contempt of Congress. Therefore, they cannot even be interviewed by the respondent's counsel or by the respondent.

That is the most closed process that exists in any place in our system.

Mrs. **Martin**. The original intent was actually to protect the Member.

Mr. **Oldaker**. Actually, it was. And I think it is a very justified intent. But I think it has worked in unforeseen ways.

Mr. **Nields**. Would it be helpful if I spoke to that same issue? I am in sympathy with a lot of what Bill is saying, but I don't think I would go quite so far.

First, on the issue of instructing witnesses not to inform the Member or anyone else what they have said, it seems to me that that is very difficult to justify and indeed, it may well be unconstitutional.

If my memory serves me correctly, the federal system imposes secrecy on government employees involved in the grand jury process but not on witnesses. And I believe there have been some cases which have held that it would be unconstitutional to attempt to gag the witnesses.

It seems to me both from that point of view and also from the point of view of fundamental fairness it should never be true that one side to a case or an investigation has exclusive access to the facts. I just cannot see how that is ever justifiable.

Second, I am very sympathetic to the idea that the Member ought to be given disclosure prior to the time the decision to charge is made. The charging decision is a very, very important decision, as everyone here has agreed, I think. The Member ought to have an input into that decision, and he cannot very well do that if he doesn't know what the information is that the committee is going to base its decision on.

There might be some exceptions, maybe, in very rare instances, but I would think the general rule ought to be that the Member and his lawyer understand what the state of the information is before they have their final chance to argue against a charge being filed. I don't think I would go so far as to say that they ought to be brought in earlier than that and given access earlier than that to the information gathered.

The committee will have a legitimate investigative function which is appropriately done, it seems to me, in some kind of relatively private atmosphere for the reason that Congresswoman Martin has already mentioned and for others.

We have generally permitted government agencies conducting investigations to do so in a private way, at least up to a certain point in the proceedings. Witnesses frequently are frightened of the people that they are testifying against or maybe they are embarrassed.

One can imagine very easily a situation in which a secretary or some staff person has information which they feel they ought to disclose to the Ethics Committee, and if they know they are going to be told that tomorrow morning you will have your deposition taken, and the Member will be sitting there listening to you, the information may never be disclosed to the committee.

It seems to me that it is time enough to bring the Member in before he has to make his case against the charge being filed and that it would be a poor idea to bring him in sooner than that. Again, that is very much out of line with what is normally done in situations of this type if there are any in the rest of our legal proceedings.

Mr. **Frost**. Any Members who need to go vote, please go ahead. The hearing will continue.

I have several questions, and then we will call on the other Members of the committee. Under the current situation, and I address this to both of you, where you do not have a bifurcated committee, do you feel that there is any reason that there should be a requirement that all Members of the committee be attorneys?

For many years, there has been an informal practice that all Members, at least on the Democratic side of the Judiciary Committee, be lawyers. Do you feel that this should be a requirement, given the current situation with the committee where the committee is asked to make some legal judgments from time to time, and even if we bifurcate, should there be a requirement that Members of the committee be attorneys?

I would address it to either one of you.

Mr. OLDAKER. My feeling is no, for the same reasons that I would have reservations about requiring or allowing lawyers to argue on the Floor of the House. I think that this is an institution and should be handled differently than a judicial system.

This is a decision being made by a committee of the House on Members. I do not think the process should be over-legalized.

But one thing, and this goes back to what John just said, we oftentimes draw analogies back and forth to either the criminal or civil process. I tried to make the point before, you have to look at this as a congressional process purely and differently.

Mr. NIELDS. I agree wholeheartedly that being a lawyer should not be a condition of being a member of the Ethics Committee. It seems to me, I am not sure I can tell you exactly how lawyers think differently from other people, but I am sure that they do and that you are narrowing the scope of your committee by having everyone be lawyers.

And I think they function more like grand jurors and jurors than they do like judges anyway, and for the political reason that Bill mentioned, I also think that it is better to have the full House represented on the Ethics Committee.

Mr. FROST. Yet at some point they may be called upon to decide the legal sufficiency of the charges, if you have a different procedure for summary judgment, an earlier procedure for summary judgment as was suggested, or with the current procedure where a motion is in order.

Mr. OLDAKER. And that is why I said a possibility should be looked at as far as an appellate process to a separate body. A suggestion was made that it be the Rules Committee or a subcommittee of the Rules Committee, and that subcommittee should be all lawyers. Now, there may be another process where you actually had a judicial determination by lawyers.

Mr. FROST. The committee is exercising some judicial function. It is not just functioning as a jury or as a grand jury, but it does have a judicial role in these proceedings.

Mr. OLDAKER. I agree.

Mr. FROST. Let me ask another question. And Mr. Nields, I think you made the suggestion of a single special counsel who would serve for a specified period of time. How would you compensate that person? Would that person be compensated on an hourly basis? Would that person be a salaried employee of the committee or the House?

Mr. NIELDS. The first thing I should say is that I haven't thought the problem through, but it was in my mind more in the nature of a permanent, full-time job, although I grant you it might not use up eight hours a day. But I had in mind more in the nature of a salaried position than an hourly rate.

It might be you wouldn't get the kind of people that you would want if you did that, and you would have to adjust. But the idea would be that this person would be on call all the time and would be expected to devote a considerable amount of time to the committee's work and business and not simply wait until a newspaper article came and work on a matter then.

Mr. **Frost**. We all are aware of the very significant legal fees that were involved in the most recent investigation with the outside counsel and employing an outside counsel for an extended period of time on an hourly basis. That is why I raise the issue.

Mr. **Nields**. You might get a retired judge. You might get a young lawyer. I am really not sure. But I had more in mind that this would be someone who would be paid a judge's salary than an hourly billing.

But as I say, that practical aspect, it seems to me, would depend on some degree on the committee's ability to find people at various rates and under various conditions.

Mr. **Frost**. One other question. The most recent investigation into the Speaker, of course, highlighted the way the committee functions. It really did focus very graphically on something that you both touched on, the significance of the preliminary stage and of the statement of alleged violations. If a particular investigation has received enough publicity and enough treatment in the press, the Member's rights could potentially be placed in jeopardy, simply at the conclusion of that part of the proceeding where the committee has issued a statement of alleged violations. There may be so much momentum behind the statement of alleged violations that it is very difficult then to have a fair disciplinary proceeding.

I guess the question is what one or two things would you do to change the system as it currently operates to make it fairer to Members of Congress during that preliminary investigation stage, during the proceeding leading up to the statement of alleged violations—if you had to single one or two things out?

You have talked about a number of different things. But if you prioritize those, what would be the most important changes we could make to protect the rights of Members during that part of the proceeding?

Let's start with Mr. Nields.

Mr. **Nields**. I think Bill has already touched on the most important thing, disclosure of the evidentiary basis of the charges, of the prospective charges, prior to the time when they are brought and prior to the time that the Member in question makes his presentation or argument to the committee as to why the charges should not be brought. I think that is number one.

Mr. **Frost**. Bill?

Mr. **Oldaker**. In addition to that, I know that John feels that the time period should be limited to when that information is given and I guess I agree to that, but I don't see as much need as he does.

Knowledge is oftentimes power, and I think if people are going to have to testify in public at some time, and they are unwilling to be seen by respondent or respondent's attorney, that that should be known early on.

One other thing is that the ability to file a motion, a dispositive motion prior to the statement of alleged violations, is very important, I think, where the higher standard of proof would come into play.

In other words, you could file a motion for summary judgment basically stipulating all of the facts that committee counsel had come up with and ask for a determination to be made by the committee at that time.

I think that the committee is hamstrung in many ways because it does not have that ability at the current time. I noticed in the Wright case, when we came down to the bottom line, there were a number of facts that we didn't disagree on but the question of whether you had to move ahead to an ultimate hearing on those or whether there was clear and convincing evidence that these would be violations wasn't even addressed.

So, the question was that they had to move ahead and then there was a determination on the same fact on which there was little disagreement.

Mr. LIVINGSTON. Thank you, Mr. Chairman. A couple of housekeeping questions I had not heard you address, either of you, but would either of you favor a statute of limitations, be it five, six years or whatever?

Mr. OLDAKER. I would favor a six-year statute of limitations.

Mr. LIVINGSTON. Three full terms?

Mr. OLDAKER. Three full terms.

Mr. NIELDS. I think I would favor not having a rule on the subject, at least not having a very rigid rule on the subject. I think once you go beyond, once you accept the idea that you are going to discipline Members under certain circumstances for acts committed before the current Congress, I think the Congress and the committee might well regret having fixed some rigid time period.

This is not a situation where the result is jail or even monetary in most situations. It seems to me that Congress may want the flexibility of acting on reliable information which is over six years old.

You might want to put in some sort of a presumption that cases will not be brought over a certain length of time. But I see little to be gained by tying your hands with a rule now when I am sure we could all invent circumstances under which you would regret it.

Mr. LIVINGSTON. Well, it has been pointed out to me that even if we had such a statute of limitations, it would still be within the purview of the House to consider as a privileged resolution, a reprimand, sanction or expulsion of any Member without regard to that limitation. So I guess you could always open an investigation even if you had one—but, Mr. Oldaker, what is your response?

Mr. OLDAKER. I would agree. The House institutionally can reprimand or expel a Member whenever it deems that appropriate. The suggestion of a statute of limitations would merely be on limiting the investigatory authority of the Standards Committee.

I think that the problem of not limiting—and I have some sympathy with what Mr. Nields says—the problem with not limiting it is if you do not have some limit, you can go back 20 years or 30 years. It is very difficult to deal with.

Mr. LIVINGSTON. Questions about preemptory challenges. Would either of you consider, if we went to the bifurcated process and had that select jury, that a respondent would be entitled to knock off Members of the proposed jury for whatever reason he might have?

Mr. OLDAKER. I have not thought about it, but I would think that as long as both sides would give them the same right, both the outside counsel or staff counsel for the committee and the respondent's attorney would give them the exact same rights on challenging a Member.

Mr. NIELDS. I regard it as a close question. I am not sure. You won't have the right to make challenges to the committee Members if the adjudicatory functions stayed within the committee.

The reason for moving it out of the committee wouldn't be to make it like a jury in that sense. I think it is a close question. I can live with either system.

Mr. LIVINGSTON. You talked about the attorney on the Floor. I think both of you more or less favored counsel being entitled to speak.

Mr. OLDAKER. I did not.

Mr. LIVINGSTON. You did not. In fact, Mr. Nields, would it not intrude on the traditions and the history and the current rules of the House to permit a non-Member of the House to address the body? Do you have any thoughts about that?

Mr. NIELDS. I guess I think that you are in a far better position to assess that kind of thing than I am. I suppose it would. I had been under the impression—I may be incorrect about this, that, for example, when the Senate conducts trials after the House votes an impeachment that lawyers appear in the Senate.

Mr. LIVINGSTON. As observers and counsel to the respondent, but not participants in the debate. House Members prosecute it. The Senate Member himself responds or the judge, whatever.

Okay. With respect to the term for counsel making a House-appointed counsel, I have some real concerns about that. I think that if he becomes a permanent staff member, first of all, I think there is a very real chance that you end up not getting the talent that we have been able to attract in recent years for that type of specific limited function.

Secondly, I think there is also the possibility that when he is appointed at the outset of the year, presumably he will be subject to the same political introspection that every other political appointee might be subject to and that they might be more subject to intimidation or other political pressures than would a solely independent counsel who can go back to his own job and not worry about Congress any more once he's finished his assignment.

Do you have any thoughts on that?

Mr. NIELDS. I think the points are well taken, both points are well taken. As I say, I am not set in any particular approach. It does seem to me it is worthwhile trying to find an improvement on the current system under which we operate, for the reasons I indicated before. It seems to me that the committee finds itself most of the time in a position of responding to the press.

The idea, and I think it is a very important idea, of the House doing its own self-policing is in large part so that the public under-stands that the House is part of the solution, not part of the problem.

Mr. LIVINGSTON. I think that is a problem for us to convey to the press, notwithstanding the process we might use. I think over the years it can be said that the process has worked pretty well, even though there have been glitches.

Finally, Mr. Oldaker, you have said that you think we shouldn't formulate our process on the basis of the criminal process of the courts. Yet, I have heard your suggestions, and they seem to be a compilation not only of most of the rights and protections inherent to the defendant in a criminal process, but then some. No criminal process affords that right today.

I think that in this environment, frankly, you have a very real and strong potential for intimidation and repression of testimony if the respondent is made a part of the discovery all the way through from the beginning of the investigation to the end.

Mr. OLDAKER. And I think all of us who have been in the legal process to a certain extent are biased by our background and our knowledge. In the civil process, you have the right to see evidence as soon as it is available, as soon as it is filed.

I think what I was saying is we should be guarded against analogies. We oftentimes reach out for an analogy to try and shape the system. What I am saying is be very guarded about those analogies because Congress is, in fact, a different institution, and the process should be fitted to this situation and not molded from another situation.

If I might respond to one thing, an idea came to mind that you may wish to look at senior judges as a pool of people who could be outside counsels. It would require a statutory change. Senior judges are there. They are available. They would be the type of people who, I think, the public would have great confidence in as outside counsel.

Mr. LIVINGSTON. Thank you.

The CHAIRMAN. Thank you.

Let's talk more about bifurcation in terms of how we could get together a petty jury. Are you at all concerned about the problem that might ensue if you took a random panel of six or 12 or whatever it might be Members of the House, given the fact that some Members are particularly vulnerable in re-election terms?

Maybe they are freshmen, and they don't know their way around yet. Would you be fearful, as I am sure many incumbent Members of the House would be, that we might end up with a group of people who could not truly let their own best judgment be registered in a case of any respondent who came before them?

In other words, do you think we would have to do some partisan self-selection to create a larger panel of people that might then constitute a smaller panel to be drawn by lot?

Mr. NIELDS. Have the Speaker and Minority Leader select a pool of 20 and then draw three out of each pool by lot? Something like that sounds like a reasonable idea to me.

Mr. OLDAKER. I agree.

The CHAIRMAN. You don't think we ought to set up subcommittees within the committee either by reducing the amount of work the Member might do or enlarging the committee and have the committee be a grand jury and on the subcommittee have a petty jury, and maybe reversing those responsibilities periodically so you are not all playing the same role?

Mr. OLDAKER. I thought of that in the most recent case I handled and made the suggestion that a subcommittee be created of the three lawyers on each side of the committee. Of that committee, those six be the persons empowered to do the preliminary inquiry and act as the outside or special counsel.

There are a number of ways you could do it, I think. The problem is that if you create a subcommittee, then that subcommittee would also be part of the full committee in voting out the preliminary inquiry. I think therein lies the difficulty.

The CHAIRMAN. Unless you limited their responsibilities on both ends.

Mr. NIELDS. Then what you end up with if you do that is whoever is serving as the petty jury segment of the committee ought to be out of work almost all the time. You almost wonder whether it wouldn't be simpler and better to have the current committee structure remain as it is now for the most important function, which is the charging function. Then, hopefully you wouldn't have very many petty juries.

The CHAIRMAN. I favor this idea increasingly because I do think this is a terribly time-consuming role, as we have all agreed. We have got to somehow limit the amount of time Members are required to serve.

One of the ways to do that is to somehow avoid this constant overlap from one Congress to the next of unresolved issues when you don't want to break continuity, but you really owe it to people to give them relief, or you end up with a situation that apparently you had, John, where you don't get attendance. You don't get the kind of attentiveness that the institution deserves.

We have got to work on a way to spread the burden around. I also think parenthetically it is a way of educating Members a good deal more about the rules and regulations they operate under here by having service on the panel be as broad and widespread in the membership as possible.

Let me ask you a related question. How do we deal with the question of bringing about an investigation? How do we, in my view, place some restraint or burden on the complainant?

I have a feeling that the committee is becoming a way station in the middle of a campaign. There are so many people who will, maybe frivolously or perhaps not so frivolously, but for political purposes at least, bring complaints to the committee which they realize cannot be resolved in a reasonable time frame and will hang over the head of the respondent, who may be a candidate for office, until well after the election. We don't want to limit access to the committee, to the general public or to our colleagues.

On the other hand, there seems to be no downside today, no costs that can be applied, no limit at all on the potential to abuse the committee process and the Congress and certainly to take unfair advantage in any given instance.

Does anybody have any thought as to how we might balance this?

Mr. **Oldaker**. This was an issue early on at the Federal Election Commission. Of course, it has not been resolved. It has only continued to fester, in fact, increase.

The **Chairman**. Before the FEC?

Mr. **Oldaker**. Before the FEC. One of the methods tried early on is that when complaints come in that they be rapidly reviewed, and that if they do not set out allegations that on their face are FEC violations if proven, that they be immediately dismissed and it not be bound up into all the newspaper articles and all the other information that could possibly be attendant to that Member in a determination as to whether or not the FEC should open a preliminary inquiry made on all of that information.

I think that rapidly the complaint itself should serve as a vehicle for determining whether that should open a preliminary inquiry or not. The faster that happens, I think the less likely complaints will be filed.

If they are dismissed almost immediately, the political gain is short.

Mr. **Nields**. I agree with that. It seems to me one approach is time. In other words, some requirement of a prompt resolution of a complaint filed by an outsider based on some kind of a standard that the committee would have to decide had been met, either by the complainant or by its own inquiry into the complaint, before you would go to the preliminary inquiry stage.

I have reason to believe there is an inappropriately low standard to bring a charge. It is closer to the appropriate standard for conducting an investigation. I don't know what the exact words are, but it seems to me that somebody ought not to be able to use the committee for their benefit unless the committee decides after a very short review that there is a good reason to proceed with the investigation. I think some kind of time limit would be useful.

I might add again that if you had a committee and either a special counsel, outside counsel, chief counsel that everyone was satisfied was independent, sufficiently independent, you could almost take away from the complainant the power to do anything other than offer information to the committee and its counsel.

That, for example, is the way things work in most—we keep going back to these prosecutorial models—but that is the way it works in a federal prosecutor's office. The complainant has no power to force the investigation to proceed. You rely on the fact that we believe that a prosecutor's office is going to want to investigate something if there is anything there. So they receive information and make their own decision about whether to proceed.

I am not sure I would recommend going to that, but I just make that observation.

The **Chairman**. If we are going to use reason to believe as a trigger to investigate, what would you institute as a trigger to prosecute and then to convict?

Mr. **Nields**. Well, you could use probable cause. That is the standard that is used in the judicial system. My own view, and I think it may be abberational, is that that is a much too low standard, even in the prosecutorial model.

I don't think we used as a practical matter either reason to believe or probable cause when we made our decisions whether to go forward in the Korean situations, in the four situations where charges were filed.

I think we looked at the evidence and said could a reasonable committee decide that the standard for conviction, so to speak, had been made out based on this evidence. And if yes, then the charge was appropriate. If not, no, it wasn't.

Whatever the standard is, and I would think clear and convincing is the appropriate standard at the adjudicatory phase, I would think that the standard for whether you file a charge is do you have evidence from which a reasonable group of congressmen could conclude that a violation had been shown by clear and convincing evidence.

Mr. OLDAKER. I agree with what John says. I think that substantial evidence or a rule which has some definition that is written by the committee, however you define substantial evidence, and not look necessarily to the terms which we were all taught in law school.

I am very leery about using reason to believe at any stage of the process, even to open the preliminary inquiry. That is a standard used at the Federal Election Committee, EEOC. I think that is a term that has become almost meaningless in any sense at all. It is basically something used to open the door with.

Also, I would agree that you should have some time period there after the complaint is filed after 30 days, you have to dismiss it.

The CHAIRMAN. Back to my point about frivolous complaints. Is there any way you could conceive of where there would be some downside to gratuitously complaining, at least a political result? I mean, a letter from the committee criticizing the frivolity of the complaint?

This is obviously going to be in the eye of the committee, the Chairman and Ranking Member. Is there any way you could make people think twice about sending newspaper clippings to the committee for political gain?

Mr. OLDAKER. You could have some impact over Members. You might even have some impact over those who would like to be Members. But unfortunately, you will have little impact over those who are not in the process at all.

What you might do about that is just force people to go to their friends to file the complaints.

The CHAIRMAN. The state party chairman rather than the candidate or something like that?

Mr. NIELDS. You can think of situations on the other side of the line where people would be frightened to bring information to the committee in the first place, and you almost would worry more about that than the other.

If you give the committee the power to reject information as being insufficient and the obligation to do so promptly, it seems to me that would be a better way of weeding these things out.

The CHAIRMAN. I worry about both. The problem I have is I cannot see a time when we can handle these things with sufficient promptness because of the limitations on our staff and the fact that we simply cannot be in a position in a timely way of getting to the bottom of sometimes very complex matters some distance from Washington. It cannot be adequately responded to either way.

That increasingly is what we are presented with. We would have to have a much larger staff, people sitting, waiting for the bell to go off. Of course, it is going to start ringing in August and September of an election year. So we will be overstrapped even at that point in responding to all the complaints that get brought before us.

I am wondering if there isn't some way we could require that no more complaints could be received before a certain point until after an election, at which time, of course, they could begin again. That could be abused.

I don't have an answer, but I do think the judicial process has some answers for frivolous complaints that are brought. Judges have the discretion to make statements from the bench, for example.

Mr. OLDAKER. Also, a judge could impose sanctions——

The CHAIRMAN. Yes, contempt. I don't know exactly what I am referring to, but I think there are certain things they can do. What are they?

Mr. NIELDS. Well, two things they can do. One is they can impose sanctions on a lawyer who files a complaint that doesn't have an adequate basis for what it alleges.

Second, they can impose attorneys' fees and costs on the plaintiff if his complaint is utterly frivolous. But those are rarely utilized remedies.

It seems to me that if you try to build them into this process, you do two things. One, you may inhibit the flow of information to the committee. The other is you may tangle yourself up in proceedings relating to whether the complaint was frivolous that are more time consuming and burdensome than the complaint itself.

The CHAIRMAN. Of course, we walk into the criticism that we really don't want to do this work in the first place and all we try to do is protect ourselves.

Bob?

Mr. LIVINGSTON. The thought came to me that the more we try to codify, the more doors we open for ourselves to walk in and get into trouble. I think we really ought to leave a lot of discretion in the hands of the committee and the leadership of the committee. You know, if we do that, obviously if a frivolous complaint comes in that is so blatantly political, then the committee leadership can make a statement to that effect. That leaves it in their hands.

The CHAIRMAN. Following on your statement, you know, we do have a philosophical discussion periodically about whether we ought to put general guidelines in and let the committee determine or whether we should have, for the protection increasingly of Members, more specific areas of violation and sanctions.

Should we have any specific penalities enumerated in our rules? Should we be more prepared to give individual Members more firm ground upon which they can stand around here? What do you think?

Mr. OLDAKER. Two separate questions in my mind. One, I think that the rules that have to be complied with have to be very specific. The concept which has arisen recently in several cases that you can violate the spirit of the rules and be held accountable for that seems to me a very dangerous concept because no notice is then given to the Member as to what their obligations are.

So, I think in the case of the rules themselves, they have to be carefully drawn, and you have to know what in fact the Members' obligations are.

As to penalty, I think the committee should be allowed the broadest way to make that determination because facts and circumstances can differ so much in cases that it would be almost impossible to codify what the committee should do as far as penalties.

A broad range of penalties are laid out currently in the rules. I think they are sufficient.

Mr. NIELDS. I am essentially in agreement with what Bill just said.

The CHAIRMAN. Okay. I know there are a number of questions that we asked specifically. Some of them are less central to what we are about here but still important if we are going to go into this area and make some changes.

At this point, let me thank you both for your willingness to be with us today. We appreciate the expertise you bring. As one Member, I look forward to meeting you privately but not publicly ever again. Thank you.

[Whereupon, at 10:45 a.m., the task force was adjourned.]

STATEMENT SUBMITTED FOR THE RECORD

BEFORE THE BIPARTISAN TASK FORCE ON ETHICS
U.S. HOUSE OF REPRESENTATIVES
101st CONGRESS

STATEMENT OF
FRANK A. S. CAMPBELL, ATTORNEY-AT-LAW,
ON ENFORCEMENT PROCEDURES FOR HOUSE ETHICS RULES

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TABLE OF CONTENTS

Page

INTRODUCTION.....1

I. SEPARATION OF THE CHARGING AND JUDGING FUNCTIONS.....2

- A. *Ad Hoc* Formation of a Bipartisan Disciplinary Panel.....3
- B. Random Selection of the Panel from the Full House.....3
- C. Excuse or Disqualification from Panel Service.....5
- D. Challenges for Cause and Peremptory Challenges.....6
- E. The Size of the Disciplinary Panel.....8

II. THE ROLE OF OUTSIDE COUNSEL AND THE QUESTION OF *EX PARTE* CONTACTS.....9

III. THE RIGHTS OF A MEMBER UPON BECOMING A RESPONDENT IN AN ETHICS INVESTIGATION.....11

- A. A Member's Rights Upon the Filing of a Complaint.....11
  - 1. When a Complaint Should be Accepted for Filing.....11
  - 2. The Standard that Must be Met Before Proceeding to a Preliminary Inquiry.....13
  - 3. The Time Limit for Committee Action on a Complaint.....14
  - 4. The Question of a Statute of Limitations on Complaints.....15
- B. A Member's Rights Upon Initiation of a Preliminary Inquiry.....17
  - 1. Permitting Dispositive Motions Before the Committee Votes on Issuing a Statement of Alleged Violation.....17
  - 2. Permitting a Respondent to Make a Motion for Summary Judgment.....18
  - 3. Permitting the Respondent a Broader Range of Discovery.....19
  - 4. Permitting Discovery Before a Recommendation Concerning Charges is Made to the Committee.....20

5. The Standard for Issuing a Statement of Alleged Violation....21

C. A Member's Rights Upon Issuance of a Statement of Alleged Violation....22

D. A Member's Rights at a Disciplinary Hearing....26

E. A Member's Rights During Debate on the Floor of the House....28

IV. INCREASING THE COMMITTEE'S REGULATORY ROLE AS A MEANS OF PREVENTING RULE VIOLATIONS THAT REQUIRE DISCIPLINARY ACTION....29

CONCLUSION....33

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INTRODUCTION

I appreciate the invitation to testify before the Bipartisan Task Force on Ethics concerning proposed changes in the enforcement procedures for investigating and adjudicating violations of the ethics rules of the House of Representatives. My experience in the area of congressional ethics comes from representing Congressman George Hansen (R., Id.) in 1984 in his prosecution for violations of the Ethics in Government Act and, after his conviction, before the Committee on Standards of Official Conduct. After a preliminary inquiry, a disciplinary hearing and debate on the floor of the House, Congressman Hansen received a reprimand for failing to report certain transactions and debts on his Ethics in Government Act financial disclosure forms.

I was not able to appear personally before the Task Force at its hearing on July 12, 1989, as I had a trial which began that same day in the U.S. District Court for the District of Columbia. I am glad, however, to submit a written statement. I have had an opportunity to review the transcript of the hearing. While I will not attempt to address all of the questions raised there, I will set forth my views on those areas where I believe change would enhance the fairness of the enforcement procedures without unduely compromising their efficiency and effectiveness.

I. SEPARATION OF THE CHARGING AND JUDGING FUNCTIONS

The most important change in the disciplinary process that this Task Force can recommend is that of separating the functions of charging a Member with a Statement of Alleged Violation of a House rule, and judging whether the violation has been proved. Under the current system, both functions are performed by the same members of the Committee on Standards of Official Conduct ("Standards Commitee").

The current practice raises serious questions about how open-minded the Committee members are at the disciplinary hearing once they have already voted to bring charges against a respondent at the end of their investigation. This is certainly the feeling I had at the conclusion of the disciplinary hearing in Congressman Hansen's case. The hearing seemed no more than a rehash of the preliminary inquiry; we were presenting the same arguments to the same Committee members who had already viewed the evidence once and voted against the Congressman in deciding to bring the charges. The appearance, if not the fact, of impartiality was absent at the hearing stage.

After the Statement of Alleged Violations was issued in the recent case against Speaker James Wright, I wrote an article, published in the Wall Street Journal on May 1, 1989, criticizing the fairness of the fact that the same Committee members who investigated Mr. Wright where about to sit in judgment of charges they voted to bring. Rather than repeating the reasons set forth in my article for separating the charging and judging functions, I have attached a copy of the article to this testimony.

The simple answer to this problem is to have a separate panel of Members sit in judgment of the charges from those who vote to bring them. These Members will not have seen or prejudged the evidence. It appears that a consensus is developing in favor of this separation since the conclusion of the Wright case. Speaker Wright endorsed the idea in his resignation speech, as did senior House Members following his resignation, and the discussion of the issue at the Task Force hearing last month focused not so much on whether the change should be made, but how. On the question of how the separation should be accomplished, I offer the following suggestions.

A. Ad Hoc Formation of a Bipartisan Disciplinary Panel

I think it is a given that the panel that sits in judgment of charges at a disciplinary hearing should be bipartisan, as is the Standards Committee. In addition, since disciplinary hearings are held so infrequently, the panel should be assembled on an *ad hoc* basis, after charges have been lodged against a Member, as opposed to its being a standing subcommittee of the Standards Committee. *Ad hoc* formation of the panel after charges have been issued also has the benefits of (1) enhancing the panel's impartiality through the devices of random selection and peremptory challenges discussed below, and (2) spreading the burden of the difficult task that the panel must perform.

B. Random Selection of the Panel from the Full House

The disciplinary panel should be randomly selected from the membership of the full House. This will assure the respondent and the public of the total impartiality of the panel selection.

I do not favor the suggestion made at the hearing of drawing the panel from a smaller pool of senior Members from both parties preselected by the Speaker and Minority Leader. Nonrandom or subjective preselection of a smaller venire, or jury pool, particularly once the identity of the respondent and nature of the charges are known, has the potential of raising questions of partisan or political motives in the selection.

The concern that junior Members may be less insulated from political pressures and therefore less able to exercise independent judgment does not justify preselection. In fact, I don't believe that concern is compelling, for it underestimates the seriousness with which all Members, junior and senior, are likely to approach their responsibility once they are placed on the panel and under the spotlight it will draw. It also falsely assumes that senior Members are not just as likely to have a political axe to grind.

Neither can preselection of a venire be justified by the claim that having more senior and experienced Members on the panel is more likely to yield an accurate and just result. In the judicial process, we rely on the parties to present the law and facts fully and in an understandable fashion so that a lay jury can bring their fresh and impartial judgment to bear on the question presented. Unlike many administrative proceedings in the Executive Branch, we don't expect a jury to bring expertise in the subject area to its consideration of the issues; rather, we expect them to employ their common sense. I think the same can be said of the decision to be made by a House disciplinary panel. Expertise is the area of congressional ethics is not required to decide whether a rule violation has been proved clearly and convincingly.

Moreover, there are at least two checks on any potential lack of expertise of a randomly selected disciplinary panel -- first, the case has already gone through the expert filter of the Standards Committee before it reaches a disciplinary hearing, so presumably the panel will not be considering frivilous charges; and second, the decision of the disciplinary panel must ultimately be debated and approved by the full House.

In sum, a selection process which relies on individual discretion can be abused. For this reason, I recommend that the panel for a disciplinary hearing be selected randomly from the full House. The integrity of the panel's decision will come from the fact that it was selected at randon from a full cross-section of House Members.

C. Excuse or Disqualification from Panel Service

Prior to selection of the panel, House Members should be put on notice of the fact that they are going to be part of the pool from which a disciplinary panel is about to be selected. Members should then have the opportunity to seek to excuse themselves from potential service on the panel because serious conflicts in responsibility would make it extremely difficult or impossible for them to attend the disciplinary hearings, or because a conflict of interest would make it difficult to render an impartial or unbiased decision. For example, an excuse might be sought by a committee chairman who expects a major piece of legislation to be marked-up during the time the disciplinary hearings will be held, or by a Member who has an exceptionally close personal relationship with the respondent. This procedure could help insure that the members of the panel are more likely to appear at the hearings to hear the evidence. Rulings on excuses could be made by the Speaker and Minority leader.

Categories of automatic disqualification might also be developed. For example, all members of the Standards Committee would necessarily be disqualified because of their role in charging the respondent; other categories of automatic disqualification might include Members with exceptionally heavy work loads, such as members of the leadership or certain full committee chairman. It should be emphasized, however, that automatic disqualifications and excuses from service should be granted only sparingly, recognizing the natural reluctance of all Members to take on this exceptionally difficult task. Notwithstanding that reluctance, the respondent should have the benefit of as broad a cross-section of those who serve in the House as possible in the selection of the panel that will judge him.

D. Challenges for Cause and Peremptory Challenges

Once a panel is drawn at random, the respondent should have the opportunity to challenge for cause the seating of Members whom he believes cannot render an impartial and unbiased decision. Challenges for cause could be decided first by the Member challenged, and, if denied, appealed to the Speaker or Minority Leader.

The question of whether peremptory challenges should be allowed is more difficult to answer. If they are available, the number of randomly selected Members should be larger than the number who will ultimately serve on the panel, so that those exercising the peremptory challenges can do so in the context of seeing who is likely to replace the initially seated Members they strike. This allows a more informed use of a peremptory challenge than where a replacement Member is randomly selected only after the initially seated Member is stricken. Members of the panel would be seated in the order of their random selection. Under this system, for example, if there are six Members on the disciplinary panel, and each side has three peremptory challenges, at least twelve Members should be chosen in the initial random selection, and replacements for stricken Members would be taken in the same order. In fact, the number should probably be higher than that, perhaps twenty, in order to accomodate the possibility of successful challenges for cause.

In deciding whether peremptory challenges should be allowed, the Task Force should bear in mind that unlike the case of juries in our judicial system, the respondent and Committee counsel (indirectly through the Standards Committee members), are likely to be personally familiar with Members selected for the panel since they are colleagues in the House. It is therefore possible that both the respondent and Committee counsel may take advantage of that personal knowledge in a way that could not be done in the judicial system where potential jurors personally familiar with the parties are removed from the venire. For example, peremptories here could be used to get someone onto the panel further down the list who is known to be more or less friendly or sympathetic to the respondent, or is known to have strong opinions on the issues being tried.

The other alternative is to allow the panel to remain intact as a purely random selection, without permitting any peremptory challenges. On balance, however, since the dispute is clearly adversarial at this point, I think it would be better to allow each side the possiblity of striking someone whose impartiality they strongly doubt, but against whom they cannot make a case to strike for cause. The benefit of a decision to strike will be relative, since it will have to be weighed against the likely replacements, which, depending how the other side exercises its peremptories, may or may not work to one's advantage.

E. The Size of the Disciplinary Panel

The number of Members on the disciplinary panel could be anywhere from six to twelve. A smaller panel in that range may have the advantage of better attendance at the hearings. It should be remembered, however, that a majority vote is required to find that a count has been proved against a respondent. The Task Force may wish to consider whether a minimum absolute number of Members should be required to vote that a violation has been proved. Right now, a majority vote of the twelve-member Standards Committee is required for a finding that a count has been proved, which means at least seven Members must agree on there being a violation. If there are only six Members on the disciplinary panel, a vote of four would be sufficient to find a violation. If a consensus of more than four Members of the House is deemed desirable before a respondent can be found to have violated a House rule, then more than six Members should be required on the disciplinary panel. [1]

II. THE ROLE OF OUTSIDE COUNSEL AND THE QUESTION OF EX PARTE CONTACTS

The idea was raised at the hearing of regularizing the role of outside counsel by appointing one outside counsel who would perform all preliminary inquiries referred to him on the basis of complaints accepted for filing by the Standards Committee during one term of Congress. I favor this idea. It removes the responsibility of investigating and prosecuting rule violations from the Committee staff, who, because of their status as permanent employees of the House, may have a bias against recommending charges. It also avoids ad hoc appointments of outside counsel, who, because they are given only one case to investigate, may have a bias in favor of recommending charges. At the same time it would leave the initial review of complaints in the hands of Committee staff who could then bring to bear their expertise and institutional memory of House precedents to bear on the threshold question of whether a preliminary inquiry should be initiated. See Section III.A., infra.

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[1] The Sixth Amendment right to a jury trial in criminal cases has been applied to the states in a way which allows non-unanimous verdicts and juries of as few as six persons. See Johnson v. Louisiana, 406 U.S. 356 (1972), Apodaca v. Oregon, 406 U.S. 404 (1972), and Williams v. Florida, 399 U.S. 78 (1970). However, a jury of five is considered unconstitutional, principally because progressively smaller juries are considered less likely to foster effective group deliberation, Ballew v. Georgia, 435 U.S. 223 (1978); and when the jury size is reduced to six, a unanimous verdict is required. Burch v. Louisiana, 441 U.S. 130 (1979). Since the Constitution, Art. I, Sec. 5, cl. 2, requires only a majority vote of the House to punish a Member, and a two-thirds vote to expel a Member, there certainly is no requirement that the disciplinary panel be required to return a unanimous decision. The relevant concern here is having the panel large enough to promote effective group deliberation and ensure that the decision is made by a certain minimum number of individuals.

Because this system will create a greater separation of the investigative activities from the day to day work of the Standards Committee, ex parte consultation between the standing outside counsel and the Committee must be permitted. The Standards Committee should have imput into the direction of the outside counsel's investigation, since the investigation is still that of the Committee. Access to the Committee's greater knowledge of the rules and precedents will ensure that the outside counsel's investigation stays within the bounds of the Committee's jurisdiction. Ex parte consultation should be limited to this type of guidance, however, and not a discussion of the merits of the charges, since the Committee may eventually be passing upon the outside counsel's recommendation to issue charges. One way of deter discussions of the merits would be to require that ex parte contacts be made on the record.

In contrast to this, there should be a total bar on ex parte contacts by outside counsel with the members of the disciplinary panel. This assumes, of course, that a separate panel has been established to judge the charges, as discussed above. Having reached the hearing stage, the outside counsel has no need or justification for ex parte contacts with the members of the panel that will judge his case against the respondent. [2]

III. THE RIGHTS OF A MEMBER UPON BECOMING A RESPONDENT IN AN ETHICS INVESTIGATION

There are a number of changes in the rules of proceedings in ethics cases which would enhance their fairness to the Member who is the subject of a complaint and investigation. I suggest changes below as they are relevant to each step in the process.

A. A Member's Rights Upon the Filing of a Complaint

1. When a Complaint Should be Accepted for Filing

The Task Force should raise the standard now in place for determining the sufficiency of a complaint made against a Member before it is reviewed to determine whether a preliminary inquiry is warranted. Rule 9 of the Standards Committee Rules permits acceptance of a complaint where allegations of facts are made on "information and belief," so long as the basis for such information and belief is set forth. I believe this to be too low a threshold to trigger committee review of a complaint.

Useful comparison can be made at this point to the system set up in the Independent Counsel statute, 28 U.S.C. § 591 *et seq.* (1988). Under that statute, the information brought to the Attorney General's attention about a high ranking executive official must be both "specific" and from a "credible source" in order to warrant further review. If the information is "not specific or is not from a credible source, then the Attorney General shall close the matter." 28 U.S.C. S 591(d)(2). If the information is specific and from a credible source, the Attorney General must then commence a 90-day preliminary investigation, which is the analogue of the 30-day complaint review process under Rule 10 of the Standards Committee rules.

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[2] Indeed, the opportunity and need for ex parte consultation between outside counsel and the Standards Committee before charges are brought is one more compelling argument in favor of separating charging and judging functions.

A similar approach should be taken by the Standards Committee in determining the sufficiency of complaints to be accepted for review to determine whether a preliminary inquiry is warranted. If the complaint against a Member does not contain information that is both specific and from a credible source, it should be returned to the complainant identifying this deficiency. The complainant can attempt to cure this deficiency, but in the meantime, a Member does not have to contend with the adverse publicity of the fact that the Committee is reviewing a complaint against him, even though the information it contains is not specific and from a credible source. A relatively short period for time should be established for determining the sufficiency of the complaint -- 15 days, for example -- so that frivilous complaints are rejected quickly.

The idea here is to place more of a burden on the complainant to trigger Committee review of his complaint. Merely sending in a copy of a newspaper article quoting unidentified sources critical of a Member's activities should not automatically involve the Member and the Committee in a review of the allegations. Requiring specificity of information and credibility of source protects the Member from the political harassment caused by, and the committee from the burden of reviewing, frivilous complaints.

2. The Standard that Must be Met Before Proceeding to a Preliminary Inquiry

If the information in the complaint is both specific and from a credible source, the Committee can then review it to determine whether, under Committee Rule 10, the complaint should be dismissed because it fails to allege facts which constitute a violation of standards of conduct applicable to Members, or should be the subject of a preliminary inquiry. Under Committee Rule 10(b), the Committee need only decide that the allegations "merit further inquiry" in order to advance to the preliminary inquiry stage. I think this standard is too vague.

Here again, comparison with the Independent Counsel statute is instructive. The Attorney General is required to seek appointment of an independent counsel (which is analogous to advancing to a preliminary inquiry) if at the conclusion of his preliminary investigation he concludes "there are reasonable grounds to believe that further investigation is warranted." 28 U.S.C. § 592(c)(1)(A).

In most instances there may be no practical difference between this standard and how the Committee now applies the "merits further inquiry" standard. Still, I think it is advisable to require identifiable or articuable "reasonable grounds" for believing that further inquiry is merited before the Committee moves on to a preliminary inquiry. This would eliminate the possiblity of the Committee's advancing to a preliminary inquiry on the basis of mere curiosity or suspicion, or simply because the misconduct alleged is particularly egregious. Tightening the standard for advancing to a full-blown investigation will protect Members who are the subject of a harassive complaint motivated purely by the desire to gain partisan political advantage.

3. The Time Limit for Committee Action on a Complaint

Because the mere pendency of a complaint against a Member may be all that is necessary for a complainant to gain political advantage, swift action on disposing of a complaint should be one of the Committee's top priorities. Under Committee Rule 10(a)(4), within 30 days of its receipt, a complaint is to be placed on the Committee's agenda at the next regularly scheduled meeting for a determination of whether the complaint merits further inquiry or should be dismissed. I have no knowledge of how closely this rule is followed, but I sense that the Committee often takes much longer than the prescribed time to dispose of a complaint because of competing work and limited resources, particularly in the less widely publicized cases.

One way of alleviating this problem is to provide that the complaint be automatically dismissed at the expiration of the initial review period, unless the Committee affirmatively acts to extend that period on the grounds that its competing work precludes timely completion of the initial review. The Member will then have the benefit of the Committee indicating that it has not acted on the complaint because it has not had the time to do so, precluding speculation that the delay means there is substance to the charges. Only a short extension period should be permitted, however, and the emphasis should be on the timely completion of the initial review.

4. The Question of a Statute of Limitations on Complaints

The question has been raised as to whether a statute of limitations should be imposed on complaints and investigations concerning conduct by Members alleged to violate House rules. The policy underlying limitations of actions in criminal cases was described by the Supreme Court in Toussie v. United States, 397 U.S. 112, 114-115 (1970):

> The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activities.

Some of these policy concerns apply to congressional disciplinary investigations as well. Members may be hindered in defending themselves against charges where the passage of time has eliminated otherwise availabile records or obscured the memories of witnesses. There is also a certain unfairness to calling a Member to task for behavior that has long since faded into the past. On the other hand, unlike executive branch law enforcement agencies, the Committee is not a professional or full-time investigative body, and must rely almost exclusively on information from outside sources in determining whether conduct has occurred that warrants investigation. Moreover, while the potential sanctions in House disciplinary proceedings can end a political career, they do not include the deprivation of liberty, which is almost always available as a sanction in criminal cases.

The latter factors argue against establishing a hard and fast statute of limitations in House disciplinary proceedings. Instead, there could be a presumption against beginning a preliminary investigation on a complaint about conduct more than six years old, unless it is described with a particularity which demonstrates that the passage of time will not prejudice the ability to clearly determine the facts. In addition, a vote of two-thirds of the committee, rather than a simple majority, could be required before opening a preliminary investigation on conduct more than six years old. There could be an exception to the presumption where the allegations are of serious misconduct involving a breach of trust central to the representative function, e.g. allegations of bribery (there should be no constraint on pursuing such cases, since punishing such wrongdoing, regardless of the passage of time, is essential to vindicating the integrity of the institution).

Thus, rather than barring them with a statute of limitations, complaints about older conduct can simply be held to a higher standard to trigger an investigation, except in cases of the most egregious misconduct.

B. A Member's Rights Upon Initiation of a Preliminary Inquiry

1. Permitting Dispositive Motions Before The Committee Votes on Issuing a Statement of Alleged Violation

I agree with the statements at the hearing that, from the stand point of both the Member and the House, the charging decision is the most important decision in the disciplinary process. Once the decision to charge is made, a great deal of public attention is focused on the charges, forcing the Member to defend himself not only in front of the Committee, but also in the press. The pendency of formal charges also places the House as an institution under fire, fueling public complaints about its failure to observe standards of ethics.

I think it is therefore desirable to give the Member the opportunity to dispel allegations of misconduct, whenever possible, at the earliest possible time. This would require setting up a formal mechanism for testing the legal sufficiency of the proposed charges, and any affirmative defenses thereto, before the Committee votes on whether to issue them. In other words, the respondent should be able to make what are in effect motions to dismiss or for summary judgment before charges are even issued.

Current Committee rules allow a respondent during the preliminary inquiry to present to the Committee "a statement respecting the allegations with respect to which the inquiry is being held." Standards Committee Rule 11(a)(2)(A). Such statements usually include not only a statement by the responding Member concerning the facts, but also arguments as to why the

Committee should reject the outside counsel's recommendation to bring charges. In a certain sense, then, permitting dispositive motions at this stage will not be a significant departure from current Committee practice.

The respondent should be given the choice of making such dispositive motions either before or after charges are filed. Repetitive motions could be avoided by providing that the denial of a motion made before charges are filed precludes the respondent from raising the same issues in a motion made after the charges are filed. This in turn means that early disposition of such motions will allow immediate advancement to the hearing stage as soon as the Statement of Alleged Violation is issued.

2. Permitting a Respondent to Make a Motion for Summary Judgment

A formal motion to dismiss for failure to state facts that constitute a violation is now permitted _after_ a Statement of Alleged Violation is issued. _See_ Standards Committee Rule 12(a)(2). In a motion to dismiss, the respondent argues that, even assuming all allegations by Committee counsel are true, no violation of a rule can be established on the alleged facts.

For some reason, motions for summary judgment are not permitted by current Committee rules. In a motion for summary judgment, the respondent would be able to submit evidence of his own, contend that no material facts are in dispute, and argue that a violation cannot be established by the undisputed material facts. A motion for summary judgment would allow a Member to bring his own supportive evidence to bear on the question of the legal sufficiency of the charges, assuming there is no dispute about the facts upon which the charges turn.

Ironically, under current rules a respondent _is_ permitted to submit supportive evidence after charges are filed and before reaching a disciplinary hearing, but only as part of an answer which sets forth negative or affirmative defenses to the allegations in the Statement of Alleged Violation. It is not entirely clear how submission of supportive evidence with an answer aids a Member's defense at this point, since there is no formal mechanism for the Committee to act on that evidence before the disciplinary hearing begins. Presumably, the Committee might act on such exculpatory information by failing to achieve a majority vote to hold a disciplinary hearing pursuant to Rule 12(e)(1), which would constitute a dismissal of the Statement of Alleged Violation. _Id._ There is no requirement, however, that the Committee consider supportive evidence in deciding whether to hold a disciplinary hearing. I think it is far preferable to permit the respondent to make a formal motion for summary judgment, and to do so, as indicated above, before the Committee votes to issue charges.

3. Permitting the Respondent a Broader Range of Discovery

Current Committee rules permit the respondent discovery of only (1) exculpatory evidence and (2) documentary evidence which is material to the preparation of his defense. _See_ Standards Committee Rules 18 and 19. In the spirit of permitting the earliest possible resolution of each case, I think that the respondent should be permitted discovery of _all_ of the evidenciary bases of the Committee counsel's case against him, including witness statements and deposition transcripts. In addition, the Committee should be barred from continuing its current practice of issuing gag orders that prohibit witnesses who have given evidence to Committee investigators from talking to the respondent or his attorney.

I would not go as far as the suggestion at the hearing that the respondent or his attorney be present at the taking of statements or depositions. I do think, however, that after he receives copies of the statements or depositions taken by Committee investigators, the respondent should be given the opportunity to take supplementary depositions of witnesses whom he regards as hostile or uncooperative.

4. Permitting Discovery Before A Recommendation Concerning Charges is Made to the Committee

This discovery should certainly be allowed in time for the respondent to make use of it in the dispositive motions discussed above, which means sometime before the Committee votes on whether to issue a Statement of Alleged Violation. If the discovery material were produced to the respondent as soon as the Committee counsel received it, the respondent would also be in a better position to submit supportive evidence that may influence the Committee counsel's recommendation to the Committee. On the other hand, contemporaneous production of evidence presents the potential of the respondent attempting to influence other witnesses with the information he receives from Committee counsel as the investigation progresses.

Because of this danger, I recommend that the respondent be given the Committee counsel's evidence at the conclusion of the investigation, but before Committee counsel submits his report and recommendations to the Committee. The respondent can then undertake additional discovery to supplement the record as described above, and present this evidence along with salient arguments to Committee counsel before he completes his report and recommendations to the Committee. If Committee counsel still recommends that the Committee issue charges, the respondent will then have the evidenciary basis upon which to make dispositive motions prior to the Committee's vote on the charges. If such motions are made and denied, there will be no need to delay proceeding to a disciplinary hearing after the Statement of Alleged Violations is issued, since discovery will be complete and the Committee will already have ruled on all dispositive motions.

5. The Standard for Issuing a Statement of Alleged Violation

I agree that a more stringent standard should be required for the Committee to issue a Statement of Alleged Violation than the current "reason to believe" standard. I favor the standard suggested at the hearing that the Committee issue charges if it concludes that a reasonable panel of Members could find on the basis of the evidence offered by Committee counsel that the charges had been proven clearly and convincingly.

The "reason to believe" standard would permit a case to go to a disciplinary hearing where there is only a scintilla of evidence, which is to say merely any evidence, in support of the proposed charges against a Member. The standard should require that the evidence be substantial in the sense that reasonable and fair-minded panel members in the exercise of impartial judgment might reach different conclusions as to whether the evidence proves the charges clearly and convincingly.

This is similar to the standard a court uses in ruling on a motion for a directed verdict at the close of an opposing party's evidence in determining whether the case should be submitted to the jury. Stating that standard in this context, a Statement of Alleged Violation should be issued where the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, the Committee concludes that a reasonable panel could find that the charges have been proved clearly and convincingly.

C. A Member's Rights Upon Issuance of a Statement of Alleged Violation

In the recent case involving Speaker Wright, the Standards Committee decided to release to the public the report of its Special Outside Counsel at the same time it issued the Statement of Alleged Violation. In explaining its reasoning in voting to issue the Statement of Alleged Violation, the Committee went to great lengths to justify the release of the Special Outside Counsel's report before the disciplinary hearing on the charges had even begun. After reviewing past precedents relating to the timing of the release of reports of outside counsel, the Committee reached the following conclusion:

> . . . the decision to release the full text of Special Outside Counsel Phelan's Report neither conflicts with prior Committee

> precedent nor represents an action at odds with the Committee's Rules of Procedure or House Rules. . . . while there is no requirement that a counsel's report be made public, there is nothing in either House or Committee Rules preventing such action should the Committee vote to do so.

Statement of the Committee on Standards of Official Conduct In the Matter of Representative James C. Wright, Jr., April 13, 1989, at 6.

The Committee was correct -- there is no rule preventing public disclosure of an outside counsel's report at the time the Statement of Alleged Violation is issued. What is equally clear is that there ought to be such a rule.

It seems the Committee's primary reason for publishing the outside counsel's report upon issuing the charges was a desire to justify its decision not to take further action with respect to certain areas that were also the subject of investigation. Id. at 90-91. This concern, however, simply does not outweigh the prejudice suffered by the respondent from the early public disclosure of the outside counsel's report. The Special Outside Counsel's report in Mr. Wright's case was an adversarial tome, 279 pages in length. It cast the mountain of evidence gathered in the course of the six and one half month investigation (including the depositions of 73 witnesses, thousands of pages of documents and 7,000 pages of hearing transcripts) in a way designed to convince the reader of Mr. Wright's guilt before he ever reached the disciplinary hearing. In fact, in his introduction to his Report, the Special Outside Counsel went so far as to make the following observation about his findings:

> Although at this stage in the proceedings the Committee need only have a "reason to believe" a violation occurred in order to go forward with a Statement of Alleged Violations, our conclusions that further action should be taken by the Committee are based upon an evaluation of probative evidence which we believe "clearly and convincingly" establish each fact relied upon in our analysis.

Report of the Special Outside Counsel in the Matter of Speaker James C. Wright, Jr., Committee on Standards of Official Conduct, U.S. House of Representatives, 101st Cong., February 21, 1989, at 2.

While one would certainly expect that an outside counsel would not recommend the charges unless he could thought he could prove them clearly and convincingly at a disciplinary hearing, his analysis of why he thinks he can do so should not be a matter of public knowledge and debate before the hearing. The responding member has not had the opportunity to put together a similarly comprehensive analysis demonstrating why the charges are unfounded. This in turn means the outside counsel's one-sided analysis of why the responding Member is guilty of a rule violation is circulating essentially unrebutted among fellow Members, the public and the press for the weeks or months that elapse between the filing of charges and the disciplinary hearing. In the interim, the Member is left to defend himself in a piecemeal fashion, usually in 10 second sound bites when confronted with the cameras and microphones of a press armed with the details provided in the outside counsel's report. In fairness to the Member, the disclosure of the grounds for the charges, and his defense to them, should be accomplished through the orderly and balanced process of receiving evidence at the disciplinary hearing.

Assuming, as urged above, the charging and judging functions are performed by a separate panel, there is an even more compelling reason for not releasing the outside counsel's report prior to the disciplinary hearing. The purpose of a disciplinary hearing is stated in Committee Rule 16(a):

> A disciplinary hearing respecting a violation charged in a Statement of Alleged Violation shall be held to receive evidence upon which to base findings of fact and recommendations, if any, to the House respecting such violation.

The disciplinary panel should therefore be receiving evidence on the charges for the first time at its hearing. Predisclosure of one side's evidence before the hearing runs the risk of the charges being prejudged.

Thus, a rule should be established prohibiting the release prior to a disciplinary hearing of an outside counsel or Committee staff report concerning the grounds for issuing a Statement of Alleged Violation. All that should be released by the Committee is the Statement itself. [3] There is no need for the Committee to explain or justify its action at this point. A report by the disciplinary panel upon disposition of the charges can, where appropriate, incorporate the investigatory findings of the Committee's outside counsel.

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[3] An exception to this rule could be where the respondent files, either before or after charges are brought, a motion to dismiss or for summary judgment. If the motions are made public, the Committee counsel's opposition thereto could also be made public. In that case there is a balanced opportunity to address facts within the limited context of the legal issues raised in the motions.

D. A Member's Rights at the Disciplinary Hearing

I believe the procedures currently in place for the conduct of a disciplinary hearing are generally acceptable. The standard of proof at this stage of requiring clear and convincing evidence is appropriate.

One change I would recommend is to the provision in Rule 16(b) which allows acceptance into the record of "[d]epositions, interrogatories, and sworn statements taken under Committee direction." This provision, of course, presents the question of whether testimonial hearsay should be allowed at disciplinary hearings. While acceptance of such uncontested proof may be appropriate when the Committee is deciding whether to issue charges, I don't think it is necessary or desirable at a disciplinary hearing where the facts are adjudicated, since the respondent has no opportunity to confront or cross-examine the witnesses giving such testimony. A great potential for abuse lies in such an open-ended ability by Committee counsel to use testimonial hearsay to prove his case against a respondent.

In both criminal and civil cases in our judicial system, the general requirement is that testimony be taken orally in open court. See Fed. R. Crim. P. 26, and Fed. R. Civ. P. 43(a). In both cases, out of court statements are not permitted as affirmative proof unless they possess the special assurances of trustworthiness which characterize the exceptions to the hearsay rule, or are not considered hearsay because they are used for the limited purpose of impeaching the in-court testimony of a witness. In civil cases, depositions may be used as affirmative proof in certain circumstances, but only where the party against whom they are offered was present at the deposition and had an opportunity to cross-examine the deponent.

The rules governing House disciplinary hearings also appears to assume that evidence will come principally from live testimony, yet includes the unlimited exception for testimonial hearsay in Rule 16(b). I think there should be some limits. Answers to interrogatories and sworn statements should only be allowed in the record to establish non-contested facts or to impeach the testimony of live witnesses. Depositions should only be admitted for impeachment purposes or, when offered as affirmative proof, where the respondent has had the opportunity to cross-examine the deponent, and the deponent is unavailable to testify as defined in Federal Rule of Civil Procedure 32(a)(3). 3/

3/ Federal Rule of Civil Procedure 32(a)(3) provides, in relevant part, as follows:

> (a) Use of Depositions. At the trial . . . any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with the following provisions:
>
> (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the

Otherwise, testimony at a disciplinary hearing should be taken orally.

E. A Member's Rights During Debate on the Floor of the House

Current practice has allowed Standards Committee members to have outside counsel assist them on the floor of the House during debate on a disciplinary resolution, but bars the responding Member from having his counsel present on the floor. This is what happened in Congressman Hansen's case, where special outside counsel to the Committee were present on the floor and consulting with the Committee Chairman during the House debate on a recommended reprimand, while my co-counsel and I could only watch Congressman Hansen defend himself from a monitor in the Minority Whip's office outside of the House chamber.

I do not think it is necessary to allow lawyers to speak for a Member during the floor debate on a disciplinary resolution.

(Footnote cont.)

> United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

The responding Member should, however, at least have the equal right of having his lawyer to consult with on the floor, when the Committee also has that right and advantage.

IV. INCREASING THE COMMITTEE'S REGULATORY ROLE AS A MEANS OF PREVENTING RULE VIOLATIONS THAT REQUIRE DISCIPLINARY ACTION

Finally, I believe the Task Force should design an increased regulatory role for the Standards Committee and its staff in identifying and correcting potential conflicts of interest or other ethical problems involving Members before they become serious enough to require investigation. The most obvious tool for accomplishing this is the annual financial disclosure reports filed by Members under the Ethics in Government Act ("EIGA").

The Committee is now only required to review EIGA reports for facial completeness, and not to question any substantive aspects of the reports. It seems to me, however, that the Committee should be required to make a substantive review of the reports for the purpose of identifying potential conflicts of interest or other ethical problems. Suggestions on how to effectively review EIGA reports of Members for potential ethical problems could be gained from the experience of the Office of Government Ethics and the White House Counsel's Office, which now routinely engage in substantive review of the EIGA reports of senior Executive Branch officials.

One way of making conflict identification easier would be to amend the disclosure forms to require Members to list all of their committee and sub-committee assignments on their EIGA reports. (In fact, this would aid the public as well as the Committee in judging the the question of financial conflicts of interest when reviewing the reports.) Particular attention could be paid to business or economic interests that involve small groups of people, as opposed to larger, publicly held companies.

When a potential problem is identified, the staff could follow-up with the Member by stating the concern about a conflict and requesting clarification. If the clarification does not put the concern to rest, the Committee could advise the Member of the possible consequences of failure to take steps to cure the financial conflict.

The next logical question is what type of further action the Committee can or should take where it believes a conflict of interest or other ethical problem exists. Under the Ethics in Government Act, the authorities reviewing disclosure reports in the Executive and Judicial Branches are given remedial powers with respect to conflicts of interest. The Office of Government Ethics is empowered to secure compliance with confict of interest laws and regulations through divestiture, restitution, establishment of a blind trust, exemption, or voluntary transfer or reassignment. 5 U.S.C. App. § 206(b)(3). Similarly, the Judicial Ethics Committee of the Judicial Conference of the United States must make an annual review of EIGA reports filed by judicial officers and employees "to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review." 28 U.S.C. App. § 306.

In contrast, the Ethics in Government Act only requires the Standards Committee to review the disclosure reports filed by Members to determine whether they "are filed in a timely manner, are complete, and are in proper form." 2 U.S.C. S 705. There is no authority to require the divestiture of financial investments or holdings by Members because of a conflict of interest in the performance of official duties.

Divestiture and mandatory disqualification of Members from voting were rejected as remedies for conflict of interest in the Legislative Branch because they would either deprive the Member of the community of interest with his constituency that formed a basis for his being elected, or would disenfranchise his entire constituency. Reliance is placed instead on public financial disclosure, and its likely influence on the electoral process, as the major deterrent to financial conflicts of interest for Members of Congress. The Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives, prepared by the Standards Committee, summarizes this approach to regulating the conduct of House members in the following quotation from the House Commission on Administrative Review of the 95th Congress:

> In the case of investment income, then, the Commission's belief is that potential conflicts of interest are best deterred through disclosure and the discipline of the electoral process. Other approaches are flawed both in terms of their reasonableness and practicality, and threaten to impair, rather than to protect, the relationship between the representative and the represented.

H. Doc. No. 95-73, 95th Cong., 1st Sess., "Financial Ethics," Communication from the Chairman, Commission on Administrative Review, p. 9.

The problem with relying exlusively on the rough justice of financial disclosure in tandum with what is generously called the "discipline of the electoral process" is that it often allows ethical problems to fester to the point of scandal before anything is done about them. An investigation of the problem is only then initiated, which in turn generates a great deal of public comment about the lack of ethical standards in Congress. The integrity of the institution suffers as a result. Often the Member also suffers as a result of this laissez-fair approach to financial ethics in Congress. The Committee's lack of early intervention in the form of an informal inquiry where it believes a Member may require guidance, or even reining in, can allow a matter to advance to a point where a formal investigation, whether by the Committee or Executive Branch prosecuting authorities, becomes unavoidable.

This is why I believe that the Standards Committee should be assigned the role of substantive review of EIGA reports. It need not be given the power to order divestiture of holdings by a Member or to disqualify a Member from voting. It is enough that the Committee be required to inquire about possible problems revealed in a disclosure report and alert the Member to relevant ethical standards. Members often are simply not as well attuned to the rules of ethics as the experts on the Standards Committee. They may also sometimes tread close to the line of propriety, only to back away when questions are raised about their conduct. To the extent that the Committee can apply its expertise to head off ethical problems, they will spare the Member, and the institution, the agony of a full-blown investigation of whether the conduct in question constitutes a violation of rules that should be punished by the full House.

CONCLUSION

In United States v. Brewster, 408 U.S. 501, 519 (1972), the Supreme Court made the following observation about the congressional disciplinary process: "[a]n accused Member . . . is at the mercy of an almost unbridled discretion of the charging body that functions at once as accuser, prosecutor, judge, and jury from whose decision there is no established right of review." While the House may wish to avoid overlegalizing its disciplinary process, I believe the integrity and credibility of that process can be enhanced by the selective adoption of certain judicial procedures. In some cases the parallels are undeniable, and the judicial procedures can in fact advance the general policies underlying the disciplinary process.

The above recommendations are therefore made with the intent of increasing the procedural protections afforded a Member subject to a disciplinary investigation, and to do so in a way that, wherever possible, decreases the drag of such investigations on the House of Representatives. The emphasis is on prompt resolution of cases short of a disciplinary hearing, and, when that is not possible, the fair and expeditious trial of the charges against a Member in front of an impartial panel of his colleagues.

Respectfully submitted,

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ATTACHMENT

THE WALL STREET JOURNAL MONDAY, MAY 1, 1989

Wright Can't Get A Fair Hearing From Ethics Panel

By FRANK A.S. CAMPBELL

Imagine a system of justice in which a grand jury is led through a lengthy and expensive investigation by a prosecutor the panel has hired for that purpose. During the investigation, the target and his lawyer are given an opportunity to appear and state in detail the defense to the allegations, both through oral testimony and written submissions. At the end of the investigation, the grand jury agrees with the prosecutor's recommendation to issue an indictment charging numerous violations of the law.

Then, incredibly, as the trial on the charges begins, all the grand jurors file into the jury box to sit in judgment on the question of guilt or innocence. During the trial, the defendant is haunted by a sense of deja vu as he once again attempts to convince the jurors of his innocence, even though he earlier failed—using the same arguments—to persuade them not to issue the charges in the first place. Although the jurors must now apply a stricter burden of proof to find him guilty, the defendant feels he is fighting an uphill battle because the jurors' role in charging him has left them with less-than-open minds. They're not hearing the evidence for the first time, and they have already reached at least preliminary conclusions about the evidence implicating the defendant in a violation of the law.

Fortunately, under our system of criminal justice, this would be only a nightmare dreamt by a defendant the night before opening arguments at his trial. In the case of the disciplinary system of the House of Representatives, however, it's no dream. This is the Kafkaesque nature of the system in which Speaker James Wright must now defend himself against charges that he violated rules of the House of Representatives. The same members of the House ethics committee who issued a five-count Statement of Alleged Violations against the speaker will now sit in judgment of the charges they voted to bring.

Under Anglo-American law, the charging function is always performed by different individuals from those who sit in judgment of the charges at trial. Common sense tells us a grand juror couldn't reasonably be expected to sit as an impartial petit juror after he has already reviewed the evidence and come to the conclusion that there is probable cause to believe the defendant committed a crime. Think of how loudly the defense lawyers would cry foul if Judge Gesell allowed one of the grand jurors who charged Oliver North to sit on his jury. The Constitution creates a similar separation in the impeachment process by providing that the House votes articles of impeachment, while the Senate sits in judgment at an impeachment trial.

Surely the same human dynamic is at work in the House disciplinary process. Nevertheless, the rules of procedure of the House ethics committee provide that the same committee members who voted to issue a Statement of Alleged Violation, the equivalent of an indictment, must sit in judgment at the trial-like disciplinary hearing. This may be more efficient, since those committee members are already familiar with the facts, but it certainly isn't fair to the charged member.

The fact that the full House ultimately votes to accept or reject the committee's recommendation of discipline hardly makes up for this procedural deficiency, since by that stage, the momentum against the member is overwhelming. No wonder most of the media is speculating that Mr. Wright's goose is now all but cooked.

Even more troubling in the speaker's case are the reports that the committee's special outside counsel, Richard Phelan, had numerous contacts with committee members outside his formal presentations. According to the Legal Times, Mr. Phelan and "various panel members dined out frequently." Can these members now expect to be viewed as objective judges of Mr. Phelan's final presentation of his case against the speaker?

The truth is that House members expect too much of their colleagues on the ethics committee by letting them perform both the charging and judging functions of the disciplinary process. At the very least, the appearance, if not the fact, of fairness suffers under the current system. Members should not be defending this process; they should be changing it.

There is nothing sacrosanct about the procedures followed by the ethics committee. Article 1, Section 5 of the Constitution provides that the House shall have the power to "punish its Members for disorderly Behavior," but doesn't say how it is to go about that task. The disciplinary procedures are established by the House in its own rules of governance. They should be changed so charges of violations of House rules are decided by members who haven't prejudged the evidence.

At the beginning of this Congress, the speaker and minority leader appointed a bipartisan task force in the House to review its rules on ethics. This change in the disciplinary process should be one of the task force's first proposals for reform. In the meantime, if the speaker wants a fair hearing on the charges against him, he should move to disqualify every member of the committee on the grounds that they can't render an impartial and unbiased decision given their participation in the charging stage of the proceedings. In support of his motion, the speaker should seek from the committee an accounting of all contacts Mr. Phelan had with the members outside of formal meetings. If the motion is granted, the House can then appoint new members to hear the case who have not prejudged the evidence.

Mr. Campbell represented then-Rep. George Hansen (R., Idaho), in 1984 in his criminal prosecution for violations of the Ethics in Government Act, and, following his conviction, in the disciplinary proceedings of the House ethics committee.

HEARING ON CONGRESSIONAL ETHICS AND THE ROLE OF THE MEDIA

WEDNESDAY, SEPTEMBER 20, 1989

House of Representatives,
Bipartisan Task Force on Ethics,
Washington, DC.

The task force met pursuant to call at 9:15 a.m. in room 2247, Rayburn House Office Building, Hon. Vic Fazio (chairman of the task force) presiding.

Present: Representatives Fazio, Martin, Morrison, McCollum, Gillmor, Livingston, Sundquist, Obey, and Stokes.

The Chairman. I think we can start the hearing at this time. I am sure other Members will be joining Mr. Stokes, Mr. Sundquist and myself as we go.

Today's hearing of the Bipartisan Task Force on Ethics is on the subject of congressional ethics and the role of the media. Our purpose here is to explore the media's perception of its role in reporting on ethics rules and statutes, and to examine the problems and constraints that both the media and Congress face in presenting ethics issues to the public.

The Task Force decided last July to schedule this hearing because of two principal considerations: first, congressional ethics rules and procedures depend on accurate, well-informed press coverage if they are to work as intended; and secondly, media coverage of congressional ethics issues shapes long-term public perceptions of the Congress as an institution.

Press coverage of Congress is often criticized by Members as unduly negative and not presented in a balanced way. The concern is that such coverage contributes to public cynicism and skepticism about the work of government, and thus further erodes public confidence in the legislative process.

Recent stories on the GAO report on the ethics committees' implementation of the financial disclosure law illustrates the problem. At the beginning of this year—in fact, it was the weekend some of us who are Democrats were traveling down to Greenbrier, as I remember. You would think we could have no further problems that weekend, but we did. A story appeared stating that an unpublished GAO study found that the disclosure reports were often erroneous and the system for review of reports was inadequate. When the GAO report was finally issued this month, the news story focused on the one negative GAO finding while downplaying its principal conclusion that the House and Senate have made substantial progress in improving their financial disclosure systems.

In fact, the first press story was that the House did an inadequate job because people who file for office, but don't really complete their candidacies—lose the primary, for example, are often unwilling to file the financial disclosure statement that incumbents are required to file. So the focus was on the failure to enforce the disclosure law on people who barely made a passing effort at becoming Members of Congress, let alone joining the body.

In the case of ethics issues the focus is often on scandal ethics, rather than on an attempt to put issues into perspective and explain the substantive basis for these ethical standards.

Complicating the problem is the snowball effect caused by competition among news organizations. A story will continue and gather momentum as charges and countercharges and new charges are repeated day after day. As a result, a Member of Congress may not be able to survive politically because of the sheer number of stories on alleged ethical misconduct, even though he or she may be ultimately exonerated.

I think we are all watching a similar kind of example at the moment that occurs in the case of one of our colleagues, the gentleman from Massachusetts, Mr. Frank.

Obviously, the tension between Congress and the news media has been with us from the earliest days of the republic. We remember the Thomas Jefferson quote that if he had to choose between a government without newspapers or newspapers without government, he would not hesitate a moment to prefer the latter.

That was before he became President. He later commented that "Nothing can now be believed which is seen in a newspaper."

We will begin a dialogue on these issues today, and I hope we can find ways in which both the Congress and the media can help to improve the public's understanding of this institution and ultimately enhance the public's trust in government.

We are fortunate this morning to have a distinguished panel of scholars who have studied these issues from different perspectives, and members of the journalism profession who will speak from practical experience. I want to particularly thank those working journalists who have been willing to participate in this hearing.

We didn't realize the degree to which First Amendment sensitivities would preclude people who have often discussed these issues with us privately from talking about them publicly. But since that sensitivity does exist, we are particularly pleased that some of our friendly critics and some of our critics who are not always friendly, are here. Particularly Sara Fritz and Tom Oliphant, who are currently working members of the press, have been willing today to offer their observations and their concerns to the panel.

First, though, I would like to introduce the first three panel members who will appear before us: Bruce Jennings, Associate for Policy Studies at the Hastings Center and co-director of the Center's project on Legislative Ethics and the Media; Stephen Hess, Senior Fellow at the Brookings institution, who has written several analyses of the interaction between Congress and the media; and although I don't see him at the moment, Michael Josephson, President of the Josephson Institute for the Advancement of Ethics, who has studied the issues of ethics in journalism and ethics in government.

Before I ask the panelists to begin, I would however, at this time like to yield to my co-chairperson, a good friend who is a real contributor to the work of this task force, Lynn Martin of Illinois.

Mrs. MARTIN. Thank you, Mr. Chairman. I join in the remarks of Mr. Fazio. Vic and I are very pleased that you are attending today, and we look forward to listening to you. One of the major accomplishments of the first Congress was the adoption of the Bill of Rights, including the First Amendment guaranty of free press, and yet ironically both the House and Senate adopted rules in that same first session excluding the press.

The House soon realized the error of its ways and repealed the rule in 1790. The Senate followed in 1793. Madison had written in Federalist Number 51 that if men were angels, we wouldn't need a government. If we were governed by angels, we wouldn't need external and internal controls, but since none of us are angels, we need both.

"A dependence on the people," Madison concluded, "is the greatest control of the government."

This in turn presumes an informed citizenry if government was to work as intended. Where would the people get their information? Hamilton answered this in Federalist No. 84 when he wrote that those living at or near the seat of government would have the same interest in all questions that affect the general liberty and prosperity.

Hamilton went on to write, and I quote: "They will stand ready to sound the alarm when necessary and to point out the actors in any pernicious project. The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union."

Little could Hamilton truly appreciate just how far and how expeditious those messengers of intelligence would become with the later advent of the telegraph, the radio, and now satellite TV feeds.

Back in 1976 a subcommittee of the House Rules Committee issued a report advocating television coverage of House Floor sessions. In that report, the subcommittee quoted James Madison as follows: "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both."

There are some who would cynically observe that the people today see Congress as a farce and a tragedy precisely because of the popular information they receive about Congress. A May Washington Post-ABC News pool reveals that 60 percent of the American people rate the ethics and honesty of most Members of Congress as "not so good" or "poor," while 71 percent approve of the way their congressman is conducting himself. How could we all be so good and so bad at the same time?

We in Congress are partly responsible for this because so many of us get elected to Congress by running against it. But part of the problem is that the further you travel from Washington, the less comprehensive and balanced the coverage of Congress.

We have a press treatment that perhaps is inadequate, but we are faced with how do we work with the press and more importantly, the people. We are all part of making democracies work. It is appropriate therefore that we ask those most concerned with the process what they say about the process and how we in the Congress can do better.

That way we serve the people best. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Lynn.

Are there any other members of the panel who would like to make a comment at this time?

Sid?

Mr. MORRISON. Mr. Chairman, I do so only because I have got two or three hearings going at once. I am going to be in and out. I would just like to share with our fine guests from the media this morning one of the fundamental questions that is coming up so often in our hearings, and that is how can we make the disclosure report fulfill its ultimate goal of revealing those areas of potential conflict of interest for Members of Congress without having it lead to the guessing game of a net worth statement on the part of the media, a net worth statement which, very frankly I worry about because the last time around my picture was in the paper—"Sid Morrison, Millionaire, question mark."

I am a farmer like a lot of my neighbors, and maybe the total of the value of the land you supposedly own adds up, but it is all mortgaged, and so I have never counted on anything except my congressional income, and that leads to potential significant impact on personal life styles. I worry about my grand kids being kidnapped, very frankly, that sort of thing.

Is there some way we can find the bottom line in that area without leading to the media feeling like that is an open field to run a guessing game on net worth which is not accurate? I raise that only as a point, Mr. Chairman.

The CHAIRMAN. Thank you, Sid. I know because you have to be in and out that was one you needed to get off your chest, I'm sure. We appreciate your comment. Now let's begin.

I understand Mr. Josephson is driving in from Dulles this rainy morning, so we hope he will be here. Let's begin with Bruce Jennings.

Bruce, thank you very much for joining us. I think your work is right on target for what this panel is all about. We appreciate you joining us.

STATEMENT OF BRUCE JENNINGS, ASSOCIATE FOR POLICY STUDIES, HASTINGS CENTER, CO-DIRECTOR, PROJECT ON LEGISLATIVE ETHICS AND THE MEDIA

Mr. JENNINGS. Thank, Mr. Chairman. It is a pleasure to be here. I am Bruce Jennings from the Hastings Center. From 1982 to 1986 I served as the co-director of research studies on Legislative Ethics and the relationship between Congress and the media as those relationships pertain to ethical issues.

Many of the reflections I would like to share with you this morning are based upon the interviews and the research done in the course of those studies with interviews with Members of Congress and journalists alike.

One hardly needs to begin by stating the importance of the role that the media plays in the arena of legislative ethics. By legislative ethics I mean both the institutionally-based ethics regulatory process and the individual Members' conduct of their office. In both cases the media play an important role in enabling individual congressmen and Congress as an institution to fulfill its public trust and obligations and ethical responsibilities.

Ethics regulations wouldn't work without the understanding and cooperation of the press since most of the ethics regulations pertain in some measure to communication, publicity, accountability and openness which provides constituents with a better understanding and a better basis for making their own political evaluations and for exercising their own civic responsibilities as voters and as constituents.

Now this may seem very obvious, and indeed it is, but some important conclusions follow from it, I think, that will help us to sort out some of the problems that we face in trying to produce a more constructive and a more enabling kind of relationship between the House and the press when it comes to legislative ethics.

The first conclusion that follows from it is that the press is not, in fact, a detached, passive observer or reporter of the scene, but indeed plays a more active and shaping role in the overall process of ethical representation than is often acknowledged or officially understood in discussions of this sort.

I think it is important to begin by insisting that the conventional image that we have of the press as a kind of outside neutral observer is not, in fact, the case, and we have to acknowledge and try to come to grips with the sense in which the press plays a more constituative role in the legislative ethics process than we often acknowledge.

Secondly, coverage of legislative ethics posts a real problem for the press for several reasons, it seems to me. One reason which is often mentioned is that ethics matters involve systemic issues of institutional power or process or in the electoral system and that these systemic issues are very difficult to cover.

They are very difficult to present in a way which is understandable and comprehensible to most volunteers or readers. They are, frankly, boring to many people, and they are extremely complex and don't lend themselves to the kind of space that both broadcast journalists and also increasingly print journalists find themselves constrained by—time and space for words and explanation and background.

Legislative ethics is hard to cover. Technically and professionally it poses a challenge to journalists. We shouldn't underestimate the magnitude of that challenge. But there are two additional reasons why covering legislative ethics poses a problem for the media that are less often mentioned.

First, I think that to some extent, at least, coverage of legislative ethics poses a threat to what many journalists perceive to be their own professional ethics. The reason for that is that the coverage of legislative ethics more so than many other issues tends to make evident the way in which the media doesn't simply describe, but it interprets. It tends to make evident the way in which the journalist doesn't simply play a kind of passive observer role, but shapes and frames and creates the issue that he is covering.

And that more active involvement is frightening from the point of view of traditional journalism ethics because objectivity and detachment and lack of bias are the hallmarks of many of the canons of professional journalism ethics. So in a way journalists are getting a mixed message, I think, from people like myself on this issue because on the one hand students of the interaction between Congress and the press on ethical matters insist upon the active, mediating and constituative role the press is playing.

On the other hand, we are continuing to hold journalists accountable and responsible to certain canons of professional journalism ethics that make that active role a very uncomfortable one. We need in part to explore ways in which that active role can be played responsibly and ethically by journalists, thereby amending, perhaps, some of the perceived understandings of what is professional journalism ethics and trying to sketch out an easier niche for the reporters who cover ethical matters in Congress to play.

Third, and finally, I think legislative ethics poses a tough one for journalists because it raises issues that don't easily fit into the normal frame of explanation and understanding that journalists tend to use when they cover Congress, and by that frame I mean essentially their story about interest group pluralism and interest group politics.

A great deal of what you see in the media is an attempt to explain what Congress does and what Congressmen do in terms of that paradigm of political motivation and behavior, and interest group liberalism gives us a kind of what Robert Reich of Harvard has called a public philosophy.

It gives us a common story. It gives us a common way to make sense of what you Members do, of what is happening in our politic. It is a story in the sense that it is a common frame of reference and understanding. The media has a tremendous stake in legitimizing that story.

Congress, itself, has a tremendous stake in legitimizing that frame of reference. The problem is that ethical issues for legislators go beyond, I think, the legitimacy of that frame of reference. When we are talking about legislative ethics, we are talking about more than simply who gets what, when, and where and how. We are talking about more than simply bargaining and log-rolling and collision building and interest group tradeoffs and the like.

Not to say that all that is illegitimate, only to say that legislative ethics appeals beyond and behind that process to something more fundamental: the principles of democratic representation, public trust, and public expectations that run deeper in our constitutional heritage than the paradigm of interest group politics.

Therefore, in order for journalists to really cover a legislative ethics story without, in effect, reducing that story to one more instance of the workings of legislative power and politics, they must step outside that normal frame of explanation and understanding that they work with so well on a regular basis, and explain the rationale and purpose of what is going on in a somewhat different way by referring to principles that are not normally part and parcel of our every-day discussion, either in the press or elsewhere, of legislative activity.

That leads me to a couple of recommendations and conclusions. I think that our present shortcoming comes about in part because we don't provide the mechanisms for expanding the kind of coverage and for stepping out of the normal frame of political reference so that the kind of serious and more comprehensive legislative ethics story that I think all of us would like to see more of can more easily happen.

Part of the reason that it doesn't happen, I am convinced, is not because journalists are prohibited from writing that kind of story nor because they, themselves, don't appreciate the worth of that kind of story, but rather because they simply aren't given the kind of resources and encouragement that would be necessary to write that kind of story.

We make a mistake, I think, if we believe that the kind of story we would like to see printed more often is an easy one to produce or write. It really isn't an easy one to write, and we need to address how the news organizations and the Congress might work more closely together or help each other on an institutional level.

I am not talking now about an individual Member and an individual reporter. There are clearly very complex things about those relationships that need to be discussed, but I am talking now of Congress' rôle as an institution. I think there are a number of educational forums and opportunities that might be created. I am also coming to think, and this is a recommendation that I want to throw out on the table, it may be a controversial one. I am also coming to think that it would be a good idea if we could somehow institutionally separate the ethics education function from the ethics investigation and punishment or censure kind of function.

Today those two functions are lodged in the Committee on Standards of Official Conduct and the Senate Select Ethics Committee. Those committees have a difficult time playing both those roles, and sometimes I think the investigatory role of the Ethics Committees in looking at individual cases of rule violation or misconduct hampers their educational function.

So perhaps we need to create some other venue or locus in the Congress in each House for the purpose of explaining and studying and having constructive dialogue that is not defensive and not cast in a kind of, you know, somebody's case is at stake sort of mode. Some dialogue that would go beyond that and perhaps provide a common forum for the Congress to better articulate the rationale and standards behind its own rules and for the press to thereby get a better understanding and look for ways in which it could then communicate those rationales.

The other type of recommendation I would make is that I think we need to perhaps explore ways of creating a new genre of news story that would fit the needs of this particular area.

It seems fairly clear that the news story itself as classically defined, daily breaking news, is going to be limited inevitably to investigations and to the occasions of financial disclosure and the like, and you really don't get much about legislative ethics above and beyond that as news items.

Perhaps that is inevitable, perhaps that is legitimate. But what isn't inevitable or legitimate, I don't think, is the almost total lack of feature stories or other kinds of journalistic pieces that would better convey the true pressures and constraints that are placed on Members of Congress, what it is really like to be a Congressman.

People have an image of a Congressman really framed mostly by the ethics investigative reporting that they are exposed to, and it really doesn't begin to scratch the surface in terms of helping citizens have a better understanding of what the congressional process does and doesn't permit, and what reforms might really enhance responsible ethical representation better than our current system does.

I think that if the media can't find a creative way to convey that kind of political education, if you will, to our citizens, then they are really falling down on the job as far as the function that the free press plays in a democratic system is concerned.

Thank you.

The CHAIRMAN. Thank you, Mr. Jennings. At this point we would go on to Stephen Hess and welcome Mr. Josephson. Stephen?

STATEMENT OF STEPHEN HESS, SENIOR FELLOW, BROOKINGS INSTITUTION

Mr. HESS. Thank you, Mr. Chairman, members of the committee. I am not an ethicist, which I have trouble pronouncing. Rather, I am a writer with a special interest in trying to understand the Washington press corps, and therefore I thought it might be most useful, as the contribution that I would like to try to make to this task force, to paint a profile of the reporters who cover Congress.

I have done that in a fairly elaborate statement that I submit to you, and I will just make a few points from it because it is a bit off of the central topic.

I should say that my material comes from a survey that I conducted in 1988 of 190 regional reporters. They are, as you know, those reporters who follow your activities most closely. They estimated that they spent over 70 percent of their time covering Congress and 55 percent of their time covering the House of Representatives, and then I compared that with comparable data that I had surveyed in 1987 so that we have some notion of what has happened to the Washington press corps, specifically those who cover Congress, over a ten-year period.

Ten years ago, the average Washington reporter did not look like the average reporter in the rest of the country. They were so clearly an elite measured by any scale, such as graduate school education, the selectivity of the universities they went to, that, for example, while 10 percent of reporters in the United States had graduate degrees, a third in Washington did.

As I come back ten years later to look at them, I have seen that the gap has narrowed very substantially, a point that I will stress, but a point that may say for your purposes, if you are concerned about the nature of the coverage you are getting, it is not as it might have been because these are very special people who have gone native in some Washington institutional way.

They are now very comparable to the experienced, comparably experienced reporters that you would find throughout the United States. To give you an example, Mr. Chairman. You would be particularly interested in this. Ten years ago when I looked at the background of the reporters, where they came from, the Northeast was very much overrepresented, and the West was very much underrepresented.

Ten years later we find that of the four major sections of the country, the press corps in terms of their background and where they went to school, very much parallels it. There are those huge distinctions that there had been. The same would be true of education. Right now, the Washington press corps, in terms of college degrees, has virtually reached the saturation point.

It is a profession to the extent that 98 percent of the reporters here have bachelors degrees. That wasn't true in the rest of the country, but the rest of the country is catching up to that so that today about 85 percent of all reporters have it. The same thing was true, by the way, in what reporters majored in. Ten years ago there was a unique difference.

Most reporters in the rest of the country majored in journalism. Most reporters in Washington majored in humanities or liberal arts. As you come back today, you find that close to a majority have now majored in journalism here in Washington.

Overwhelmingly television reporters have majored in journalism. If there is a conclusion from that in a business in which at an entry level 85 percent of the people who are going to start as newspaper reporters or television reporters today will have had journalism school as their background rather than liberal arts or humanities, that if you are concerned, and we can identify a certain ethical coverage as an area that needs work, this is the ideal place to focus your attention.

Most reporters are going to come out of journalism schools. If you are worried about it, we must then look at how journalism schools either teach or don't teach the question of ethics. I might say that it is interesting in terms of women. Ten years ago this was not only overwhelmingly a male press corps, 80–20, but well behind the rest of the United States in that regard.

Today we find that about a third of the Washington press corps are women, but so are a third of the press corps throughout the United States. That means that the entire journalism population lags about 10 percent behind the rest of the United States in terms of professional status. By the way, what becomes very interesting is that the press corps made this tremendous spurt up in the seventies, the end of the seventies and the beginning of the eighties, and then about by the mid-eighties stopped.

It was as if they got to a third and that was some sort of threshold, and for the last five years they have been treading water in that regard.

When you look at minority hiring, and the press corps was certainly not an equal opportunity employer when I looked at it ten years ago, there were one percent who were minority members. They were almost exclusively black. That has gone up to 5 percent now as opposed to the level of other professions of 10 percent, so they are about half-way there.

But the journalism business couldn't seem to deal with both of the problems of minority hiring and women hiring.

They hired women, stopped, then started to hire minorities. In both of these categories they now look very much like the rest of the press corps in the United States. I should say, by the way, that in terms of minority hiring, we still see the phenomena of the two-fer, in the sense of women minorities as opposed to male minorities.

We also see a hiring of Hispanics, which were virtually invisible ten years ago in my studies, and in fact, by lumping these together, Hispanics and blacks, we probably fail to show the degree to which the blacks may be actually falling behind in this category. An interesting thing that I think you must keep in mind on this question is that ten years ago when I looked at journalists in Washington, there was virtually no difference between newspaper and T.V. reporters in terms of their background.

You might talk all you want about a pretty face syndrome or so forth, but in terms of television reporters they were not a uniquely young group. Nearly a fifth of them were over 50 years of age, for example.

You come back ten years later, particularly because of what has happened with the satellite going up almost ten years ago, and a new industry cover of local news that you know so well that covers you importantly, and you find now that the television press corps is much younger than the print press corps, much more likely to have majored in journalism than the print press corps, much more likely to be women than the print press corps.

Indeed, the print press corps, the newspaper, would still look particularly bad in these overall figures if it were not for the figures of television hiring. In short, there are now two distinct profiles and two distinct career patterns in terms of television and newspapers. There is simply no replacement for that generation of the Eric Sevareids or the David Brinkleys or the John Chancellors who came out of print, had that nurturing, then went into radio and eventually into television.

I should say, although I don't know how significant it is, in 1978 there were very distinct differences between newspaper reporters who worked for independent papers and newspaper reporters who worked for chains. That distinction is no longer evident, probably because the chains have become so dominant.

There is a little difference in that the chains tend to have more young reporters; that is, 20 to 29. The independent papers have more older reporters, 50 years of age or older. But even there, that is less likely to have anything to do with their corporate ownership than with the fact of the size of the paper, that smaller papers in the chains have younger reporters than the larger urban papers.

So in summary, the newspaper reporters today now look more like other newspaper reporters, even as the T.V. reporters look less like newspaper reporters. I might just add finally, that something has happened in this regard in terms of status and gaining in prestige.

This is a group of people who often think of themselves as sort of the Rodney Dangerfields of Washington journalism compared to those who are covering the President or the Secretary of State or so forth, and there is an informal seniority system at play in Washington journalism.

If you are a reporter long enough, all things being equal, you will rise to the assignment that you want. So if you measure the age on the beat you get some sense of the prestige. A beat of great esteem like diplomacy had 5 percent when I measured reporters who were under 30 years old, while when you looked at the regional reporters largely covering Congress, a third of them were under 30. So it is very significant coming back ten years later to find that it has dropped from 34 percent to 16 percent.

Clearly that is a measure of the prestige of covering Congress. Also I should say that another illustration of the desirability of the beat is that most reporters, two out of three, are sent by their home organizations, and you find now that a much more experienced reporter is being sent to Washington.

There is another measure that is sort of interesting, a rather strange one, and that is moonlighting activities. We found in the earlier study that the more outside journalism work that a reporter took, the higher he was in status.

In other words, magazines or the talk shows were asking people who were covering the White House or diplomacy, not people who were covering the California delegation, let's say. So at that time one out of five regional reporters was actually doing moonlighting. The figure today is one in three.

Also there was a correlation between prestige and travel. The more travel you did, the higher prestige you were, and the more exotic the travel was, the better.

The CHAIRMAN. You are starting to sound like Congress. It can't be, but I just thought I would throw that in.

Mr. HESS. So you had the Congressional correspondent ten years ago basically staying home. They were away from Washington on assignment 12 days a year. This jumped in the new study to 21 days, quite considerable. Although a lot of that had to do with the fact that 1988 was a Presidential year.

Surprisingly there was even a fair amount of exotic travel, to Cuba, the Soviet Union, and even the South Pacific. Finally, an additional indication that there is some upgrading of congressional coverage is in quantitative terms.

Reporters who do a lot of short pieces are not highly esteemed in this press corps. Reporters want time and space. So if you looked at the number of stories a week and the length of the stories in 1978, you would have found that these reporters were producing about nine stories a week of around 500 words.

Ten years later they are producing stories that average over 700 words, and they are now producing less than seven a week. But all of this relates basically, I think, to the fact that Congress has risen as a source of news during this period, simply related particularly to what has happened since the Republicans lost control of the Senate, the assertive 100th Congress, the Iran-contra investigations, the number of Members of Congress who would like to have been President of the United States.

All of this has meant that Congress has regularly, without regard for these questions of financial disclosure and otherwise, has made front page or top of the broadcast news, and that this journalism is the way prestige is measured.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Let's go on to Mr. Josephson.

STATEMENT OF MICHAEL JOSEPHSON, PRESIDENT OF THE JOSEPHSON INSTITUTE FOR THE ADVANCEMENT OF ETHICS

Mr. JOSEPHSON. Thank you very much.

As a prelude I should say that my interest in the approach I am going to take is from reference to the Government Ethics Center, which is part of the Josephson Institute's effort in the area of ethics where we run programs for journalists.

About 30 percent of our work has been programs for state legislative leaders, virtually all editorial groups. So while I don't speak as a journalist, I am going to try to purport to answer some of the questions you asked in the materials you sent from my perception of running some several dozen programs and talking to hundreds and hundreds of journalists, at least as I perceive what their approach and answer is to some of those questions you have asked, and I will be happy to state my own opinion if you ask it.

But I am going to try to do that as a prelude just because I think it may be useful as background. We just did a program last Saturday for the Radio/Television News Directors Association at their international convention.

We surveyed 500 news directors about their attitudes about ethics in general. We asked them to compare their view of the ethics of various professions, including their own as compared to ten or 15 years ago, whether they thought it was higher, about the same, or lower.

You should be pleased to know that more people thought that the ethics of Congress was getting better than any of the other groups.

The CHAIRMAN. Did that speak to the base line they began at or——

Mr. JOSEPHSON. It might, as their own, they had their own as the worst suffering. In comparing television and broadcast journalism today to 10 or 15 years ago, 60 percent of them said they think it was lower than it used to be.

In comparing congressional ethics or really just ethics of politicians—we worded it more broadly than just Members of Congress—39 percent thought it was lower.

More interestingly, 16 percent thought it was higher, and those people who were more experienced, those people who had 10 or more years in the journalism field, actually 20 percent of those thought that ethics of people in public life was higher.

I think it was particularly interesting. We then asked them to compare the ethics of business executives of today with 10 or 15 years ago, and there 35 percent thought they were lower, so you have done considerably better than business executives.

Then we asked them to compare what they perceived the general ethics of the public was as compared to 10 or 15 years ago, and 61 percent thought they were lower. So only the general public did worse than they did in terms of their own surveys.

This is, I think, an interesting backdrop to the kind of approach journalists take, all this is just a survey of broadcast journalists. I don't know if it would be parallel with the print journalists.

There are some differences. It reveals a kind of cynicism about the public in general and about ethics in general that I think reflects itself in some of the answers to the specific questions.

The first question you asked was the rationale behind the congressional rules as the press sees it, how did the press look at those rules?

My perception is fairly clear on this, they believe there are two different rationales. One is the actual and one is the theoretical.

When you talk to them candidly, what they will say is we think the real rationale behind these rules is Congress just hopes to get the press and the public off our back, they want to do as little as they possibly can get away with.

They only will do what is necessary to maintain power, and that all ethics rules are only the response to scandals or problems that are uncovered.

The theoretical theory behind the rules, if you ask them what should ethical rules be based on, is a much more general principle, which is that they establish minimum standards of behavior to restore and preserve the public trust, that they are, in fact, supposed to be establishing rules of impropriety.

Now while the press, in my opinion, acknowledges the disparity between the rhetoric and the reality of what they think the motivations for these rules are, they tend to hold you to the rhetoric rather than the reality, so that in printing their stories and in doing their investigations, they act as if it really is true that the ethics rules are designed to establish legitimate standards of propriety as opposed to just the bare minimum.

Now another question you asked is have the press considered the overriding objectives of ethics rules and standards. After really hundreds of hours of discussion, I guess my honest answer would be probably not, but I think that it is because of what they perceive to be the dissonance between the rhetoric and the reality, that, in fact, there is one thing that is said when people in public life are dealing with ethics legislation, and one thing that is done. So I am not sure they are comfortable in knowing what the underlying purposes really are when they separate it. But they tend to use, it seems to me, whatever new ethics rules there are as their new targets of propriety and as their new focus to see what would be the next story.

You must remember that for the most part they believe you never go far enough, no matter what the legislation is, because the assumption is you are doing as little as you can get away with. If that is their assumption, they tend to believe the real rules of propriety are somewhat beyond your rules so that they then just use your rules in a sort of ratchet format as to the minimum standards you are willing to acknowledge now, but they will try to press and hold you to the standards that they think are higher.

On the other hand, I think in fairness I have perceived that once these rules are passed they view them as kind of a new target for what I call "gotcha journalism." The idea of new things they can catch you on if you do not comply with them, and therefore they provide kinds of hooks or angles or slants in order to justify the stories that they are going to write.

The second question you asked was what is media's understanding of what constitutes good ethical conduct. Now, again, I must say clearly media is a very diverse group of people, and they have very different views, but there are some things where you get the sense that consensus emerges, and in all the various programs I have done for both print and broadcast journalism, I feel the greatest consensus in this area.

In general terms I believe they think that the ethics of government is basically embodied in the general notion of avoiding actual and apparent improprieties and conflicts, but we know that. That is not telling us anything new.

But one of the things we are doing, in fact, our government ethics center is meeting this afternoon to go through a draft of a white paper on the public trust, where we have tried to sum up the last five or six years of actual practice of what people meant by appearances of impropriety in the public trust. We break it down into four basic areas that, I think, are reflected by the press attitude of ethics today, and we call it the "principles of public service." There are four things that journalists are going to be looking for that they think are either violations of that principle or, to the extent they care, actually acts consistent with that principle.

First, is the notion that all activities must reflect a devotion to public interest. In other words, your office is a public trust and therefore if there is any indication that that office is ever used for private gain, whether it be financial gain, or even private political gain, if it is used excessively in a kind of ambitious way, you can be certain there is a scandal, you can be certain there was a story as far as the journalists are concerned.

They are extremely vigilant, in their view, about looking for any indication of people using the office for any personal gain because the theory of the principle of public service is everything you do should be for the public interest.

The CHAIRMAN. If I could just interrupt you just for a point here. We are going to try to keep this hearing going through a journal vote which will occur because we are swearing in some new Members today, so if you see some of us get up and leave, others will leave——

Mr. JOSEPHSON. I won't take personal offense.

The CHAIRMAN. Please don't. We are not voting with our feet.

Mr. JOSEPHSON. The second part of the principle of public service, which you can virtually guarantee will be a focus of stories if they think it is violated, is the notion that a person in public life ought to be exercising his or her authority by independent professional judgment, and by independent professional judgment we mean that the decision is made on the merits with appropriate criteria being used.

Obviously, the HUD scandal would be the clear example of rather egregious cases where it appears that decisions were not being made on the basic appropriate criteria. Anytime the press sees any indication that any public authority was exercised with nepotism or with favoritism or even undue politicalism in the sense that it seems to favor politics too much, more than they think is within the range, you can be certain that they tend to believe it was a violation of this principle and it will be a story and one that they think is their obligation to reveal.

The third major area is the principle of accountability, which is that all public decisions ought to be exercised in the open or subject to scrutiny later if it couldn't be in the open at the time.

Of course we have the Freedom of Information Act and the open meeting laws and the like. They consider themselves, and, of course, there is no amount of self-interest in this, to be very vigilantly concerned about the openness with which decisions are made. Wherever it appears that public decisions are being made in private, backroom deals, things that the public has a right to know so that the people in public life are held accountable, again I suggest it is a violation of their notion of ethics, and it is a story.

The final one which has clearly grown over the years is this notion of whatever we call responsibility, which is basically that people in public life now to a greater extent than ever are expected to lead by example, not only by obeying all laws, but by not doing things that would discredit public life and conversely by doing things that ought to generate respect and pride and confidence. And, of course, the area of exposure of private things has become something that even the journalists very much acknowledge.

A year or so ago most of them denied to me that the patterns were changing. They just said, oh, just a few more stories.

Just Saturday when I surveyed the television journalists and I asked is it more likely today that some aspect of a public person's private life will enter a news story, 94 percent agreed that that was true, so there is no question about that. I then asked what they thought that was the result of.

I said do you think that is the result of press standards changing or the American mores changing so that all you are reflecting is American attitudes? Fifty-five percent said it was if not them, it was the American attitude.

I must say here I strongly disagree with that. I think it has been the press's willingness to publish that, but I am sharing with you what I think is their view of that.

So in general then, their perception of your ethical requirements go well beyond what you cover in the law. They go to this notion of both propriety and appearances of impropriety within those four areas. Now you asked what areas do they think need reform.

Once again I think there are divisions, but a fairly good consensus. Clearly honoraria is one of the biggest. Part of that has to be understood that journalists in the last 15 years have adopted the most stringent conflict of interest standard for their own profession than in any other profession they know.

They can't take free lunches. They are not allowed to take, journalists in the big papers, can't even take tickets to the World Series.

They pay for everything, and because their attitude now is we pay for everything, we get no gifts, they are very, very cynical, if not resentful about the fact that that rule may not apply to everybody.

But for the most part I will tell you journalists think this is a done deal, that you are eventually going to do away with honoraria, so their newest focus is on post-employment lobbying.

This is not necessarily with respect to Congress. Some of the HUD observations, you know, concern them with regard to people in the administration, but I will tell you it is my opinion for the next two years we are going to see an endless series of post-employment lobbying stories where they believe that is a new and important area that needs to be exposed.

The CHAIRMAN. I don't want to interrupt, but I have to ask, are you saying the media is going to give up honoraria?

Mr. JOSEPHSON. No, no, only if you don't do what they think you are going to do.

The CHAIRMAN. I understand they think we are going to, but I am asking you are they going to give up honoraria?

Mr. JOSEPHSON. One of the issues we try to bring up in these workshops is the hypothesis that is obviously evident, especially with some of the bigger name people who are taking honoraria and doing public interest. It is a dilemma, and no, they are not willing to.

No, they are not willing to do disclosure. There are good cases that could be made why they ought to make similar disclosures. Henry Kissinger wrote for the L.A. Times, and he had business interests.

The CHAIRMAN. If Dan Rostenkowski were able to make $15,000 instead of $2,000, as do the people he appears with on many podiums, he might be able to afford his own World Series tickets.

Mr. JOSEPHSON. He might be. All you really reflect is that honoraria are corrupting on both sides, not just the one. At least most of the journalists, remember very few journalists make any honoraria.

It is just the stars, and it tends to be the Washington stars that you see.

The CHAIRMAN. Some of that also affects Congress in a similar manner.

Mr. JOSEPHSON. Journalism as a whole is critical of the honoraria situation, even for journalists. The next notion is the selling of access.

It is very commonly suggested by people in politics that when we take money from interests of various sorts that the most we give is access.

You have to understand journalists don't accept that as a very good answer because they think to the extent that you are leasing your office time or the ear of your staff that that is inappropriate because they know how many people want access to the press and how valuable that would be.

So again I think they think there ought to be some reforms, not necessarily legally, but in terms of the mental attitude of the propriety of acknowledging that people who give you monetary support necessarily have your ear to a greater extent.

The third area is what is the media's assessment of their recent coverage? I really don't know that except from talking to them.

I think they are probably content. I think there is some real criticism of how they handled the John Mack situation with regard to

Speaker Wright, but they were very proud about how they handled Speaker Wright, so generally they don't have any serious criticism of that.

The revolving door, as I suggest, is part of the next big issue that I think they are focusing on in their discussion and how to deal with it.

They are also very concerned with the journalistic ethics of having been manipulated so much in the last presidential campaign.

Every single major convention I have gone to has had at least one workshop dealing with the media's responsibility to avoid the spin doctors, and who sets the agenda, and how are we going to assert ourselves more vigorously. So I suppose that will intrude its way into the nature of coverage.

The fourth question is how can the media broaden its perspective on congressional ethics rather than just this notion of very specific things.

I think in fairness that question is sort of viewed even by me as somewhat of a self-serving desire—why don't you say the good things instead of the bad things.

The problem is that journalists say we say the good things, but that is only one story. As Bruce was saying, we could write an overall story about the complexity of making the ethical decisions, and they think they have done that, but even if they do it tomorrow, they have done it, they can't do it over and over again the way they view a journalistic task. Whereas every new impropriety is a brand new story, so were they even to agree with you in general, and I think many do, that they should offer a broader perspective of the complexity of ethics, the fact remains that you are talking about one feature story that disappears from the public mind shortly after it was written, vis-a-vis the constant stories that are going to necessarily occur as they are undertaking their watchdog function.

I think another thing is that if they believe that Congress is genuinely interested in congressional comprehensive reform rather than just responding to scandals, if, in fact, there begins to be a conviction that ethics is something that is important not in a responsive, reactive way but in a proactive way, I think they might cover it differently. I would say, in my view, there is an enormous window of opportunity for that.

I think you got very good press and appropriately so for the way the Ethics Committee handled the Jim Wright affair, and there were a lot of very good stories and a lot of journalists I talked to who were very favorably impressed and I might add surprised at the way that was covered.

That kind of momentum continues so that the committee is looked at as a real serious committee rather than one that might be looked at simply as one that whitewashes the activities of colleagues. I think you are likely to see more interesting stories and broader stories because Congress will be seen as a more protective force.

The fifth question was the ethical obligations of covering Congress itself, how did the press examine their ethical obligations.

I will tell you no group that I have worked with, and in our institute we work with pretty near every major group, talks more about ethics than the press. That unfortunately makes them necessarily think they are ethical because they talk about ethics.

They will tend to talk at enormous length, and they almost always decide to print, and that, of course, is the reality that everybody has a kind of insider syndrome where they look at life through their own moral imperative of the task, which to them is to get the story in the paper by one hook or another hook.

But the fact is I think they do care about ethics and they are responsive to it, and there are two major roles they see that directly relate to how and why they will cover Congress.

They are summarized by two roles. One is a teacher and the other is a watchdog.

They believe their role as a teacher is to tell the people what they ought to know in order to exercise responsible citizenship. Now we all know that one of the movements in journalism today that is not healthy is what we call "tabloid journalism," where there is a much greater tendency to tell people what they want to know rather than what they need to know.

Since almost everybody likes to be titillated and there is a lot of voyeurism in the public, because they would like to know everything about your private lives, just out of curiosity. There is a split in journalism today as to their willingness to hold tight to the old line of things that people ought to know, which means is it relative to the person's office, versus what they want to know.

Whenever they want to say that something the public wants to know is necessary for them to know, they also use the hook of character so they can take any private activity that anybody has ever done and say it reveals something about his character or judgment, and therefore they have a hook that will allow them if they want to justify it to put that in the press.

The second major ethical obligation that they perceive is as a watch dog. They take this most seriously. This is in the blood of the true journalist and is their obligation to monitor both the legislative and individual behavior of the people in public office, to ferret out waste, corruption, mismanagement, and any conduct, personal or private, which is inconsistent with this principle of public trust.

Now that is their main job. They will always believe a higher proportion of their stories will be negative stories than positive stories because their main job is to find the otherwise unseen or undiscoverable misconduct. They also believe it is their job to make the disclosure rules relevant because without them revealing what has been disclosed, the public really doesn't know very much about the financial disclosure filings that various people in public office make.

Finally, I think they view their job to deter improper conduct by their scrutiny. The mere fact that they are willing to scrutinize, the mere fact that they are willing to write about certain things, they believe deters misconduct. I think there is substantial evidence to support that because we have done a lot of work with people in public life as well. Public officials don't do certain things if they think it is going to make the front page of the paper in a way that will be negative.

A sub question of that is are they concerned with the long-run perceptions of Congress and do they take that into account. I think the answer here is almost an unequivocal no. That is not what they perceive to be their job. Their job is to let the chips fall where they may, take a story at a time, let the public decide.

The more thoughtful journalists will say, that even that is consistent with the long run image of Congress. The only way we are going to improve the long-run image of Congress is to reveal those things we think are improper so that they clean up their act. They, in fact, believe that even if you go through a period of substantial disruption, it is in the long run much better for Congress.

There is finally the question of what are the ethical standards that the media apply to itself in performing this, and there are basically three. Accuracies, corroboration and verification is something they think they ought to have, although we have all seen a tendency to what we call in the institute, the "ready, fire, aim syndrome," where they are going to print much too early because of competition. The scoop mentality is overwhelming. Objectivity, which is the requirement that they overcome their scandal bias, and the assumption that every politician has to prove he is innocent rather than that they have to prove he is guilty, and fairness, which is the balance of giving both sides of the story.

That, then, is my presentation. I would be happy to answer any questions.

[The statement of Mr. Hess follows:]

A Profile of Reporters Who Cover Congress

by Stephen Hess
Senior Fellow
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Given in testimony before the
Bipartisan Task Force on Ethics
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I am not an ethicist as are my two colleagues on this panel. Rather I am a writer with a special interest in trying to understand the Washington press corps. I thought, therefore, that I might be most helpful to the Task Force by drawing a profile of reporters who cover Congress.

My data comes from a 1988 survey of 190 Washington regional reporters. These men and women estimate that 71 percent of their time is spent reporting on Congress. And of that coverage, 55 percent relates to the House of Representatives. For purposes of comparison, I have recoded comparable information from a 1978 survey. We at Brookings hope to publish this material next year as part of a study to be called The Main Street Capital: Local and Regional News from Washington.

"In terms of demographics," I wrote in The Washington Reporters (Brookings, 1981), "if there is an average Washington reporter and an average American, they do not look much like each other." Weighed on the same scales, the average Washington reporter also did not look much like the average reporter in the rest of the United States. Washington reporters were an elite, based on most conventional measures of status, such as educational attainment. At a time when 10 percent of all American journalists had earned graduate degrees, for instance, a third of Washington reporters had graduate degrees.

Today the gap between Washington journalists and other U.S. journalists has narrowed.

Regional Background

Washington journalists always have been suspected of an east coast slant. Daniel Patrick Moynihan, the former Harvard professor, even accused them of being "Ivy Leaguers." Our 1978 data showed that although a quarter of the U.S. population lived in the northeast, more than a third of the Washington reporters came from these states. Correspondingly, the western states were underrepresented. Ten years later these gaps have nearly closed and the percentage of reporters from the northeast and west are almost the same as the percentage of all Americans who come from these regions. Indeed, among the new-arrivals, those in our survey who have been in

Washington for a year or less, the percent from the west (24.6) actually exceeds the region's share of the population.

Education

The gap in education has narrowed, too. In terms of college degrees, Washington reporters have almost reached the saturation point (98 percent), and the rest of the U.S. journalism population is catching up. Among daily newspaper journalists, for example, college graduates went from 63 percent in 1971 to 74 percent in 1982 to 85 percent in 1988.

Ten years earlier there also had been a gap between what journalists inside and outside of the Washington beltway chose to study. The academic major of choice throughout the United States was journalism. Not in Washington. Sixty-two percent of all Washington reporters and 54 percent of the capital's regional reporters had studied humanities/liberal arts.

National figures have become more lopsided over the next decade with the growth of television, whose reporters are even more heavily into journalism education.

But now this trend is mirrored in Washington. Forty-nine percent of the regional reporters had been journalism majors, a figure that combines 45 percent of those who work for newspapers with 60 percent of the TV reporters. Moreover, 60 percent of the regional reporters' graduate schooling was in journalism. And three-quarters of the undergraduate journalism majors who went on to graduate school studied journalism. However, journalism majors are less likely to do graduate work than those who had majored in humanities/liberal arts or science/technology.

Change in the educational backgrounds of Washington reporters can be seen most graphically by comparing the youngest and oldest cohorts, those in their 20s and those over 50:

	Years of Age	
Undergraduate fields of study	20-29 (percent)	50 and over
Humanities/liberal arts	41.9	58.3
Journalism	48.4	33.3
Science/technology	9.7	8.3

These figures would lean even more toward journalism education had not so many of the younger Washington reporters attended highly selective colleges that do not have journalism departments. Fewer than 9 percent of those who went to the most prestigious universities were journalism majors whereas over half of those from the least selective schools were journalism majors.

Yet there is a semi-surprise in the increased number of journalism majors in the Washington press corps. It is possible to be a journalist without having studied journalism. In our earlier examination, news organizations broadly hinted that they might go outside the ranks of journalism school graduates to staff their Washington bureaus. Even beyond the ranks of journalists. The need was for specialists: reporters whose training was not in interviewing sources and writing stories (those skills could be learned on-the-job, said editors), but trained to analyze Supreme Court decisions or health care policy or the national debt. The problem with this design is that it is expensive; not necessarily because these reporters cost more (although they may), but because they are not fungible, that is, transferable to other assignments when the demand of events calls for reallocating resources. Apparently somewhere between our two studies the desire for specialization slowed down, perhaps even stopped. The increase in reporters who had majored in journalism may be one result of this development. The journalism major, so out of fashion in 1978, would become today's ultimate generalist.

So in the course of a decade, Washington reporters went from a background weighted in terms of humanities/liberal arts to one of vocationally-oriented training, paralleling the rest of the nation's journalists. In part, this may be a reflection of more professional education for Americans in all fields; partly this may reflect the special drive of women and minorities to get into journalism; and, of course, as journalism becomes more technologically complex, there is more to be taught. A humanities/liberal arts background was in keeping with journalism as an occupation that is easy to get into and out of. The earlier study traced the drift of Washington reporters leaving journalism, an informal personnel system that wasted talented workers. Some interviewees contended that this was simply a characteristic of a low-paying business. Reporters are better paid now. But the trend toward journalism education also raises the question of whether journalists are likely to remain longer in a profession than they did in a craft.

Women

During the 1970s women in journalism took a small leap forward.

At the start of that decade 20 percent of the employees of American news businesses were women. One woman for every four men. A decade later women comprise a third of the work force. One woman: Two men.

The employment spurt of the '70s stopped, however, the growth curve became a plateau, and the number of women in both newspaper and television journalism stuck at a third throughout the '80s. Although women are being hired at a proportionately higher rate, the male/female ratio holds constant, suggesting that the turnover rate is higher for women than for men.

Statistically, it is more difficult to measure the progress that women journalists have made in Washington. An estimate can come from counting first names of those accredited to the congressional press galleries--being on the alert for women who have been given names like Elder. This count shows that the number of women in the Washington press corps has nearly doubled in the decade 1979-1989, compared to an overall growth rate of slightly more than 50 percent.

Women were a fourth of the galleries' members in 1979. Ten years later they are a third. After surveying the press corps in 1978, I wrote, "It can be assumed that the hiring of female reporters in Washington lags behind the rest of the United States by seven years." It can now be assumed that Washington has caught up with the rest of the news industry, which lags behind the rest of the nation's professional population by about 10 percent.

By 1988, 26.8 percent of the regional reporters were women, well below their representation in the U.S. and Washington journalism workforce. Moreover, it is only that high because of television. Before the satellite went up, the regional press corps consisted almost entirely of print reporters. By contrast, a fourth of the reporters in the 1988 survey work in radio-TV and 39.6 percent of them are women. Isolating those who work for newspapers in the two studies, 1978 and 1988, the percentage of women went from 14.3 to 19.5. What holds down these figures are the smaller papers (circulation under 100,000), where only 15.6 percent of their Washington reporters are women.

Those who become journalist superstars tend to get to Washington in their 30s after considerable seasoning at other posts. It is a positive sign that the age distribution for women in 1988 more closely resembles the male pattern than it did in 1978, with both sexes now having the largest number of reporters in their 30s.

Washington reporting, for men and women, again proves to be a calling without senior citizens. Seven percent of the 1988 respondents were 50 years old or older (16 percent in 1978). But most striking is the almost total absence of older women. Thirteen persons are over 50 and only one of them is a woman, a print reporter. While nearly 40 percent of the TV reporters are women, the oldest is 42. Only three of 19 are over 40, compared with 28 percent of the men.

The men and women of regional reporting are college graduates and a fourth have graduate degrees, most often MAs in journalism. They also went to the nation's most elite schools in equal numbers, one in five, the women attending such institutions as Harvard, Georgetown, Smith, University of Virginia, Wesleyan, Bryn Mawr, and the University of Pennsylvania. Otherwise the women go to better schools, a statistic in keeping with our finding of the previous decade. Forty-five percent of the men and women now attend private colleges, a hint that journalists, at least in Washington, often come from more advantaged families.

Except for the finding that three-quarters of the women in TV are journalism majors, the educational profiles of men and women seem to be blending and distinctions can be more accurately defined by whether they work in print or electronic media than by whether they are male or female.

Men in 1988 have the same number of years of journalism experience as they had had in the 1978 survey. But the women of 1988 are more experienced by 2.5 years. The experience gap between the sexes is more pronounced in television than in newspapering. Women usually work in journalism for 5 years before arriving in Washington, while men have 9 years of pre-Washington experience. On average, the men of regional reporting have been journalists for 13 years, the women for 9 years. In other words, this is a veteran press corps.

Minorities

Women in 1987 made up 44.3 percent of the country's professional workforce, yet remained a third of the journalism population. What, if any, is the news business' lag in minority employment?

Minorities accounted for 10 percent of professional workers in the United States in 1987.

The national reporters of Washington, 1978, were 96 percent white. Of the 88 regional reporters surveyed, there was one minority respondent, a black woman. The regional beat lagged behind the overall level of the Washington press corps because regional news at the time was dominated by smaller newspapers.

When resurveyed in 1988, minorities had gone from 1 percent to 5 percent, but still remain below the national average. The gain is largely from TV, whose 8 percent is twice that of newspapers, and the movement to group-owned newspapers, which does slightly better than independent newspapers.

Generalizing on modest numbers is a risky proposition. Our 1988 total is composed of 5 black men, 2 black women, one Hispanic man, and 2 Hispanic women. Still, these figures are in line with national findings. Statistics nationally show that 44 percent of newspaper minority journalists are women, compared with 34 percent women among non-minority journalists; for broadcast professionals, 39 percent of the minorities are women and 29 percent of the non-minority journalists are women. The same trend applies among Washington regional reporters: 40 percent women in the minority population, but only 26 percent among whites. All of which suggests that there is still a "two-fer phenomenon" in the news business, wherein organizations prefer women to men in minority hiring and thereby take credit for two appointments with one job. This is especially true with on-camera positions where the color and gender of the journalist is most obvious.

The new Washington data also reflects the emergence in mainstream journalism of Hispanic reporters, invisible in the 1978 study. Nationally, Hispanics are now a quarter of the minority population in both radio and TV; on daily newspapers there are two blacks for each Hispanic. Combining blacks and Hispanics in the 1988 figures may veil the degree to which blacks are falling further behind.

The educational profile of minority and majority journalists in Washington is quite similar, as it had been in 1978: nearly all are college graduates, with about the same amount of graduate training, having attended public or private institutions in the same ratio. The level of "college selectivity" is now the same, whereas 10 years earlier more whites went to "highly selective" schools and a majority of blacks went to "not selective" schools.

Minority journalists have become considerably more vocationally-oriented in their schooling than they were in 1978 and are now much more apt to have been journalism majors than their white counterparts. Seven of 10 minority reporters majored in journalism as undergraduates and both graduate degrees are in journalism.

Half of the newspaper journalists in our survey work for papers whose circulations rank among the country's 100 largest. The cut off circulation being about 115,000. In line with the national figures, the percentage of minority journalists on big papers is double that of the small papers.

Today's minority reporters are mostly in their thirties; the minority reporters of 1978 were mostly in their twenties. (Just as we discovered with women reporters, these are not the same journalists merely a decade older.) The oldest minority reporter was 38 years old, while nearly a quarter of the white reporters were over 40. But although the minority reporters are not as old as their white counterparts, the gap is small--less than four years: a mean age of 36.4 years for whites, 32.7 for minorities.

Logic might dictate that the two underrepresented groups--minorities and women--would rise in tandem. Certainly similar arguments for catch-up hiring and promotion apply. Yet women made gains nationally and in Washington during the first half of the '80s-decade, then stopped; minorities' gains then seem to have followed. The two movements may be unrelated. Or it may be that the news industry, as one president of the United States is supposed to have said of another president of the United States, can't chew gum and walk at the same time.

Television/Print

What was notable about newspaper and TV reporters in Washington in 1978 was how much they looked alike. Most of the television journalists in our earlier study were network correspondents. TV's young-and-handsome stereotype aside, network people were not especially young: nearly one-fifth of them were 50 years old or older, proportionately more than their newspaper counterparts.

This survey, on the other hand, is about TV journalists who work for or service local stations throughout the United States, and these reporters are significantly different from those who cover the same stories for newspapers.

Although the mean age of TV and newspaper reporters is nearly the same, the figures come from adding up very different columns of numbers. The percentages for TV, when compared with newspapers, show twice as many young reporters (in their 20s) and half as many old reporters (over 50). The so-called pretty face syndrome, which had not been reflected in the 1978 count of national reporters, is now clearly evident from the tilt towards younger persons among those who work for local TV.

Almost all reporters are college graduates, but about twice the percent of newspaper reporters have graduate degrees, explained perhaps by the larger number of young people among TV reporters who may still do graduate work. Unlike the 1978 results, TV reporters are now more likely to have majored in journalism and newspaper reporters in the humanities/liberal arts. Nor is there any longer a similarity of schools attended. Newspaper reporters go to much better and much worse institutions.

In short, there are now two distinct profiles. And two career tracks. Of the 48 TV reporters interviewed for the 1988 survey, radio and television jobs are relatively interchangeable during the initial stages of an electronic news career. And a number of reporters take a short intermission in politics, working in a campaign or as press secretary to a public official. But only 5 indicate that they had ever worked in print journalism and they are among the older reporters in the sample. There is no replacement generation for the Eric Sevareids, David Brinkleys, Daniel Schorrs, and John Chancellors, who were nurtured in print journalism before switching to radio and TV.

Independent Newspapers/Chains

In 1978 there had been a number of significant differences between print journalists employed in Washington bureaus of independent and chain newspapers. The reporters at the chains, for instance, went to much less prestigious universities and were much more likely to have attended public institutions. Washington reporters, when asked about their employment preferences, had very different feelings about whether they wanted to work for independents or chains. Perhaps because only 30 percent of daily newspapers were still independently-owned by 1986 (down from 68 percent in 1960), today's reporters are no longer as interested in this distinction. At any rate, in the second survey the only major differences between reporters at the chain and independent bureaus are that there are more young reporters (20-to-29-year-olds) at the chains and more old reporters (over 50-years-of-age) at the independents, and even these differences probably relate more to the size of the newspapers than to their corporate ownership. For when reporters are grouped by the circulation of the papers they write for--regardless of whether the papers are independents or part of a chain--there is the same pattern of age-distribution: the big circulation papers have fewer young and more old reporters. Otherwise, the gaps between chain and independent newspaper reporters' demographics have nearly merged on such variables as graduate degrees, selectivity of universities, public or private institutions attended, and undergraduate majors. Where in 1978, for instance, 21 percent of the independents' reporters and 41 percent of the chains' reporters had gone to "not selective" schools, 10 years later the comparable percents are 39 for the independents and 31 for the chains.

In summary, newspaper reporters now look more like other newspaper reporters, even as TV reporters look less like newspaper reporters.

Prestige

An "average" Washington regional reporter is a 36-year-old white man, more likely to have grown up in the Middle West than in another region of the country, the graduate of a good (though not great) university. He is more likely than his 1978 counterpart to have gone to a public school, to have majored in journalism, and to have an advanced degree. He is still not interested in science. Regional Reporter 1978 and Regional Reporter 1988 would be recognized on sight as of the same parentage. Yet subtle distinctions suggest that regional reporters--who sometimes think of themselves as the Rodney Dangerfields of the Washington press corps--have gained in status.

The age distribution of the reporters (how many are in their 20s, 30s, 40s, 50s) is substantially different. There is an informal seniority system at play in Washington journalism: other things being equal, reporters over time rise to assignments of higher standing. Thus as a measure of this phenomenon, the more young people on a beat, the lower it ranks. The diplomatic beat, of highest esteem, had 5 percent of its reporters under 30 in 1978. Seven percent of the White House reporters were then in their 20s. But over a third of the regional reporters were ages 20-29, the biggest percent among the 13 beats examined. So there is special significance when half as many young regional reporters (16 percent) appear in the 1988 survey.

Most reporters are sent to Washington by their organizations--2 out of 3 in 1988. That regional reporters are older reflects the fact that more experienced reporters are being sent to Washington, which reflects the desirability of the assignment. The 1978 regional reporters had been a journalist for 6.4 years before arriving in Washington. The 1988 regional reporter had 8 years of prior experience. Moreover, what is true of newspaper reporters is also true of those sent to Washington by TV stations, whose mean age and journalism experience is slightly greater than the print journalists. It is only the freelancers who lower the age and experience levels in Washington television regional reporting.

Another hint that regional reporters' prestige is on the rise can be seen by measuring journalism moonlighting activities. A strange measurement, perhaps, but the earlier study shows that the reporters who do the most outside work are of higher status--on more important beats, such as diplomacy and the White House, older, above-average education in terms of graduate training and the selectivity of the schools they attended. In 1978 one of 5 regional reporters was also freelancing; 10 years later the comparable number becomes one in 3.

When defining prestige in Washington journalism, the earlier study found a strong correlation with travel. All of the high prestige beats (except law) involve a great deal of time on the road. The more exotic the travel, the more attractive the beat. As in the game of paper covers rock and scissors cut paper, Katmandu covers Peoria and Timbuktu cuts Ashtabula. The 1978 regional reporter, however, stayed home, averaging less than 12 days a year out of Washington on assignment. In 1988 this figure jumps to 21 days. Much of the increase relates to the presidential election. But surprisingly, there is exotic travel as well: different reporters claim they did stories from Cuba, the Soviet Union, Israel, and the South Pacific.

Additionally, there seems to be an upgrading in the work product, at least in quantitative terms. As a rule of thumb, the reporter who does lots of short pieces is not esteemed in Washington journalism. Journalists want time and space. The 1978 regional reporter produced 9 stories a week, usually around 500 words in length; 10 years later, their stories are over 700 words and they average 6.8 stories-per-week.

What had changed most, however, and what some of our indicators merely measure, is the rise of Congress as a source of news during this period. The regional reporter's domain is Capitol Hill. And Congress during Ronald Reagan's second term was a very good place to report from. When the Democrats recaptured the Senate in 1986, the stage was set for an especially assertive Congress. There was a full-blown scandal to investigate, Iran-Contra, and a large number of legislators who wanted to be president. As David E. Rosenbaum of the New York Times notes, "Congress regularly makes front-page or top-of-the broadcast news..." For a journalist, that's prestige.

CONGRESSIONAL REGIONAL REPORTERS, 1978 and 1988
percent

Characteristic of Reporter (sample size)	1978 (88)	1988 (190)
Male	81.8	73.2
Female	18.2	26.8
White	98.9	94.7
Minority	1.1	5.3
Age (Mean in years)	37.2	36.2
20-29	33.0	16.3
30-39	30.7	61.1
40-49	20.5	15.8
50+	15.9	6.8
Regional Background		
Northeast	34.9	24.9
North Central	28.7	31.6
South	24.4	26.0
West	12.0	17.5
Education		
High school only	3.4	1.1
Some college	10.2	1.1
College degree only	47.7	61.6
Some graduate work	23.9	10.5
Graduate degree	14.8	25.8
Selectivity of College Attended		
Highly selective	29.1	18.0
Selective	43.0	52.4
Not selective	27.9	29.6
Type of Undergraduate Institution		
Public	50.0	55.3
Private	50.0	44.7

Undergraduate Field of Study		
Humanities/liberal arts	54.1	45.7
Journalism	36.5	48.9
Science/technology	9.5	5.3
Graduate Field of Study		
Humanities/liberal arts	25.0	32.4
Journalism	71.4	60.3
Science/technology	3.6	7.6
Number of Responses	(28)	(68)
Years as Journalist in Washington (Mean)	5.8	4.4
Years as Journalist before Washington (Mean)	6.4	8.0
How Came to Washington?		
Assigned by home office	74.1	69.7
Changed jobs	25.9	30.3
Number of Responses	(27)	(175)

The **Chairman**. I want to thank you very much for that one, Mike. I think it was very thoughtful and very much in keeping with the purpose of this hearing. I am glad to know that this kind of dialogue is taking place. You know, we were criticized in a sense for using this forum, and I learned something from that criticism.

I understand the sensitivity about the First Amendment. Ellen Hume, whom I think is Executive Director of the Joan Barone Center at Harvard University, believes that perhaps a seminar kind of environment may have been a more fitting forum for our exchange of views on this issue, although she didn't fail to appear today for any other reason than inconvenience in terms of starting her program this week at Harvard.

But I think I believe it might have been more fulfilling for some of the members of the press to sit around a table and not in front of a podium for purposes of having this kind of discussion. Do you believe that it is appropriate for the press and public figures to engage in this kind of cross-examination of each other in a theoretical sense? Because my concern is, and one of the reasons I think members of the task force decided this hearing was an appropriate subject for us, is that these problems that we have been having have broader implications for the institution, not just for the Congress, but for the press in the way it covers this institution.

They are clearly in need of discussion, in my view, but they are not necessarily getting that kind of scrutiny and review. There is a lot of defensiveness on both sides here. Would you want to comment on the premise for what we are trying to do?

Mr. **Josephson**. Yes. I whole-heartedly agree with the premise, but I also agree with the criticism that this isn't the best format for it. We have conducted seminars with press and people in public life, off-the-record seminars, where you have a discussion, sometimes all day, and they have been extremely, in my view, fruitful and helpful because people could talk.

This is a setting where I think the press feels as if you are just trying to get your shots back at them, and that is probably not the most desirable thing. On the other hand, what you are saying is absolutely correct. I find when I do our programs for politicians they feel maligned, they feel that the shifting sands are changing.

Then I talk to the people in the press, and they say they are just trying to manipulate us. They are being self-defensive. They are self-serving. All they want us to be is their flacks and their P.R. agents. I think that kind of discussion is really necessary.

You each affect each other's profession enormously. I would urge you to consider other formats and discussions, and they can be done effectively.

The **Chairman**. I think we are going to have to do that. I am convinced the people who will appear on the next panel will use their opportunity to educate us as well as to be flack-catchers, and that is really what we intended.

We did not expect people to come to this with any other purpose other than an exchange of views in a very honest and open fashion.

We are not attempting to use any coercive power here today. That is certainly not our intent. I appreciate your response.

Lynn, do you want to take over? I will be right back.

Mrs. MARTIN [presiding]. I was thinking to myself that what everybody is talking about is that the only profitable, in the sense of good for both sides, discussions are always going to take place off the record, and the only problem with that is the only people who don't know about it are the public.

Mr. JOSEPHSON. Except it will then find its way into the way they cover Congress, I am convinced of that. We did, for instance, a program with senior staff of the Senate with a number of the Washington press corps, and I am quite convinced that attitudes changed to some extent as a result of that, not entirely, not 180 degrees, but the assumption of bad faith which I find both sides have about each other is one of the most important things to tackle and to challenge.

If you can remove that assumption of bad faith, each party treats the other more fairly, less suspiciously, and I do think it will end up improving the process by the way in which they handle each other.

Mrs. MARTIN. I hope you are right. Just one comment. The press and politicians have a natural—by definition there is the appropriate arm's length relationship, but we are natural friends, too. I mean, what other people would want to spend the time after work talking all the time about work, you know?

Mr. JOSEPHSON. It is true. They need sources.

Mrs. MARTIN. We are all fascinated by the political junkies. Most of our friends who I joke about as normal, that is, not in either profession, actually talk about other things and find them an important part of their life.

You say, did you see the poll on Missouri? No. How is the weather? So I think there is sort of this mutual drawing away and drawing together. We would actually rather be with each other except when we have to read about it, I suppose.

One other question I have, because all of you in some way are tied to academia and perhaps to you, Mr. Hess, because you were talking about the differences in reporters: Back in my home state, and this was in the main television reporters, young press people, all of whom had journalism backgrounds by training, by education, all from fine schools, University of Illinois, SIU, Northwestern, Missouri, excellent schools, but none of them had as a requirement for a journalism degree a course in political science or in government.

In other words, most of them told me the last government course they had was in high school, and yet the majority of things that a new reporter is going to cover, whether they are in the electronic media or print media, is going to be the school board, the county board. That is what you get.

You don't get France and arms control. If it is television, of course you are going to cover fires and police, but you are also covering the county board, the city council, my news conference.

I mean, wouldn't it seem normal that journalism schools would have as a requirement one course in government? I know that is a strange question, but—just so these kids know something.

Mr. HESS. I am surprised at that particular figure, because I think that the way the journalism school usually works—and actually the person who will best answer this question will be Ken

Bode, who is a dean of one—but I think that you are expected to take something like 75 percent of your courses outside of your major, which is journalism, so it strikes me in this case they are being badly advised.

Ms. MARTIN. There should be a requirement.

Mr. HESS. Just as there is a love-hate relationship, which is what you are describing, between the journalist and politician, there is one between the journalism educator and the journalism practitioner. A lot of this I really think has to be blamed on journalism organizations in that they want journalism schools apparently to teach those things that would be most useful to them that they don't have to pay for. Others pay for the training of their own workers.

Ms. MARTIN. I don't understand.

Mr. HESS. They want reporters to hit the ground running, to know how to do interviews, write a story, to do all these trade things, and this is probably what the editor in Rockford is looking for when he hires a young reporter. If he wanted that young reporter to have a sense of the humanities of liberal arts, he would be looking in fact for those qualities in their background.

So I think there is considerable pressure on journalism schools from the news industry the schools are beholding to, because they are the ones who are going to employ their graduates, on what they want taught, and the pressure is toward these sort of vocationally oriented subjects.

Mr. JOSEPHSON. May I add something on this? It is curious your perception is that politics is the thing journalists do. If you look at the news hole, which is about 30 percent of the newspaper, relatively little of it is on politics. They have got food, they have got travel, they have got horoscopes, they have got stupid pet tricks. The interesting thing is that the assumption of the politician is—in their soft features, whatever they think—the bikinis of Rio could be the story of the week.

My point simply is, if you look at the newspaper today, for that matter television shows, they are more like magazines, and the politician thinks everything is about him or her and their whole view is so narrow when in reality it is a relatively small portion of the news. It is a critical portion.

There are many, many journalists who never write a political story. In fact, the majority in any particular newsroom are not assigned to a political beat. That doesn't mean they shouldn't take politics. I just want to point that out, because there is this distorted view that all they do is watch you.

Ms. MARTIN. Or all they should do.

David.

Mr. OBEY. I don't know that I have any questions. I just have a couple observations.

I do have a rhetorical question, which I don't expect any of you to answer. But I guess I would just rhetorically ask this question: How would you feel as a politician who has a serious view about the obligations of both our institution and the institution of the press, how would you feel about the ability to have a solid, thoughtful relationship when you are told by one of the Capitol Hill press corps, by one of the three major networks in the country, that they have been told by their New York editors not to bother to send them any stories that have a positive spin on the Congress because that is not what the public is interested in?

Mr. **Josephson**. I just doubt that.

Mr. **Obey**. That happened to me. I was told that point blank by one of the Capitol press corps for one of the three major networks.

Mr. **Josephson**. My concern is whether that is an accurate perception of the editor's command. The trouble is, each individual reporter has his own Pulitzer in his eye and they have their own desires to write the story that is going to get the most important amount of attention and whether that causes them to distort their instructions, I would be surprised.

I have met with too many editors to believe they would ever say anything like that. That doesn't mean they don't think it is a better story, that it is more newsworthy if it is a "gotcha" story. I believe they do, and that is unfortunate. I believe it was said, but I don't believe that is the practice of any major media organization.

Mr. **Hess**. I think Dave Obey is on to something whether that was said or not. And if you are in Washington, you feel it. And I will give you an example.

I had been a judge of the Dirksen Award for congressional reporting once several years ago and once more recently, and there was a very decided difference in the tone of those stories, and there were lots of them because this is a big award and lots of people submit entries and they think this is the best they have done and you could see an assiduousness to the reporting that wasn't there several years ago.

In fact, the one that won this year, and you are going to hear from her, was from Sara Fritz and it was so outstandingly of good will, it was a tough report but it was so clearly a report that wasn't looking for the cheap shot, it was the unanimous choice of the judges. But that was not true of the other applicants and certainly I did not see it when I was a judge previously.

I don't know whether it is fad or anything else, but there is something in the coverage of Congress in recent years, in very recent years, that I think does accurately reflect what the Congressman was saying, whether it is so stated by superiors or not.

Mr. **Jennings**. One of the things I think is so important to get some dialogue going here is to break out of the cycle of self-fulfilling prophesy. I gather that a number of journalists feel that this is what the public wants. Only this would be accepted by the public and there is a sort of negativity that isn't the fault of the media so much as it is reflecting what their constituents, what their customers, want to read and hear. I don't know how to get a good handle on breaking that cycle. I do believe it is breakable.

But as long as journalists perceive that in their readers, I think it is very difficult for us to expect them, as a matter of public obligation or responsibility, to simply override that because after all the news business is a business.

Mr. **Obey**. The only other observation I would have is that I note in the comments of one of the witnesses to come, the statement refers to a perceptible deterioration in ethical standards over the past decade. I guess I just happen to think, as somebody who has been here for two decades, that perhaps one of the problems we have, and we have the problem on both sides within the political realm and within the journalism realm, is that both institutions have crossed over from healthy skepticism to rampant cynicism, and there is a very big difference.

I think that the cynicism on the part of politicians is spectacularly rampant, because I see meetings virtually every day around this Hill where our legislative products are talked about not in terms of substance but in terms of how you grab that daily headline on the tube and what is it that will grab attention on the part of the media, what is that little hook you can use, rather than what is the real message of the legislation. I see on the part of the press a similar cynicism, and I think in my own view, I would disagree with you, my experience from dealing with networks over a long period of time is that that negative spin is there. I have talked to enough editors of network news operations through the years to feel that cynicism coming over the telephone wire.

I think that if journalism has a problem, it lies in the fact that you have people with a negative mind-set within those editorial offices. And if politicians have a problem, it is that we have come to rely so much on political consultants and pollsters who will tell us how to play the game without thinking about what goal line it is we want to cross. I frankly think the condition on the part of both our professions is pretty sick in that regard, with all due respect to the defensiveness that we see in the part of both institutions. The sooner we stop being defensive about our own institutions and more analytical about our own, the better off we are all going to be.

The third point I would simply make, Mr. Hess, is that if the press assumes that we are going to deal with the honoraria/pay issue and that is a done deal, I would suggest I don't think there is a chance of a snowball in you know where that is going to happen—for one simple reason. I think the United States Senate turned down the last pay raise because in their own mind, they felt that raise was not high enough. They did not want to go through the political heat they thought it would take in order to get what for them would have been a 10 percent pay raise after they eliminated their outside income, because they have outside income 10 percent higher than ours. So I don't think there is a prayer of leveraging any package through the United States Senate.

I think the United States Senate effectively has most journalists suckered on that score. I don't think they understand the real motivation for the Senate's turning down that package, and in that case, I think a little additional cynicism on the part of the press might have been healthy in dealing with the Senate's posing for holy pictures.

Mr. JOSEPHSON. I might be wrong in that but I want to tell you, if you are correct, I may be wrong in how they perceive it, but it will be the major issue. If, in fact, honoraria is not dealt with, I think it is going to color the way journalists view all these other kinds of reforms that you do because it is to them, I think, the major issue.

Mr. OBEY. Someone better get that message to the House of Lords on the other side of the building.

The other point I would simply comment on is, Mr. Hess, your comment on page 7 of your testimony about there being no replacement generation for the Eric Sevareids, David Brinkleys, Daniel Schorrs, John Chancellors nurtured in print journalism. I think that is terribly important.

I think again the problem in both the political realm and the journalism realm is that you have a generation of politicians now who were brought up in the era of television, not the print media. I think you have a generation of Americans who absorb most of their information from the tube rather than through print media, and as a result I think the attention span of everybody is much shorter.

I think a premium is being placed on the ability to exploit the emotive aspects of the issue rather than the analytical aspects of an issue. I don't know how to get away from that problem—I don't think you can—but I personally think that the decline of print media is one of the most serious problems we have in terms of being able to communicate to the American people what it is we are trying to do institutionally or individually.

Mr. HESS. I might add that I am terribly worried about this. And let me state another thing I noticed. Ten years ago when I examined the Washington press corps, there seemed to be a great deal of movement towards specialization. Obviously you don't need a journalism degree to practice journalism.

Editors were talking about hiring people for their Washington bureau who weren't even journalists. If you need a lawyer for the Supreme Court reporter, you hire a lawyer; if you want somebody to examine health care policy, you hire an M.D., and so forth. But there was tremendous talk at least about Washington journalism becoming far more specialized so that we had people who knew something about the national debt and so forth.

Somewhere between my two studies this stopped. Why it stopped—well, it was expensive, to begin with. It cost more to hire a specialist than a generalist. But more than that, the specialist was not transferrable. What do you do with the Supreme Court reporter when the Supreme Court is not in session? On the other hand, a generalist was very useful. If there wasn't a fire you could send him to, there certainly would be a mugging. So I have seen the end of the movement towards specialization and back towards generalists, and I think that in part is what this tremendous trend towards journalism education reflects.

I worry a great deal about a future generation of journalists who really won't know anything. They will simply know how to write a story. And when you deal in this city with its complexities, that is very concerning.

Part of the problem there has to do with, in print journalism, the pecking order. The rise in status was always to Washington journalism, perhaps back home again to be the editor, but clearly that is it. It is not necessarily that way anymore for this large group of local journalists. Washington is not necessarily a better place to be than to be the anchor in Walla Walla.

And so you, if you are choosing that as your career, electronic journalism, you are much more likely to want to be a generalist today. There is not the same room in television for the specialist, and I think that is going to have an impact in Washington coverage.

Ms. Martin. Let me just announce to the panel that we have been going approximately an hour and a half on this. We have another panel, and I just say that in reference to your own questions and comments so everyone here will have an opportunity to speak.

The gentleman from Louisiana.

Mr. Livingston. Thank you.

I agree with and regret the sentiment of Dave Obey's comments about the cynicism. There are 535 Members of Congress in the House and the Senate. The number of Members caught up in ethical problems can't exceed more than 5 percent, and probably significantly less than that. Yet, they are the ones that we find ourselves talking about and I think there is a general perception, as a result of the way they are treated, that most of Congress is a problem. Of course, that doesn't relate to their own Congressman who they come to know and love, but the rest of Congress is all a bunch of crooks. I think that is very, very unfortunate, and I just throw that in as an editorial quip.

Mr. Hess, you seem to imply that today the educational background of the electronic media exceeds that, perhaps substantially, of the print media in the press corps. Is that true, and are you drawing any conclusions as to the quality of their reporting?

Mr. Hess. Electronic media? No. In fact, a print reporter is much more likely to have an advanced degree than a television reporter, although that reflects in part the fact that the TV reporter is younger so he or she may still have an opportunity to do graduate work.

Mr. Livingston. Mr. Jennings, you proposed an interesting idea, separating ethics education from ethics punishment in the relationship of Congress and the media. I don't know how you do that and I am particularly concerned that most of our ethics history, most of our ethics enforcement, is based on precedent. When you deal with precedent, you have to talk about specific cases.

How do we then branch out and go into the mystique of what might be, without talking about specific cases?

Mr. Jennings. Well, what I had in mind is based on the sense that I have that the development of ethics regulations in Congress has been largely ad hoc and in response to specific perceived problems that crop up one at a time, and that insufficient attention has been paid really to what might unify these regulations, what areas might still require some attention, and what the basic underlying principles and rationales for the regulations are in the first place.

Why is a conflict of interest such a bad thing? Mr. Josephson listed several notions that journalists have about legislative ethics, which I think are indeed common to electors as well. I think if you ask a similar group of legislative leaders to state the underlying principles, you would come up with a very similar kind of list, and some of the reasons behind why you shouldn't misuse an office for private gain and why you should have a sense of your responsibility to the public interest and so forth.

These things, however, are not just simple and common-sense notions. Reasonable people can disagree about how to weigh and balance some of these principles. And so there needs to be a forum for discussing these matters in a relatively intellectual or analytic, as Mr. Obey put it, analytic way, without the baggage and the encumbrance of all of the things that go along with an investigation or process, and the rights of the defendant have to be worried about and all that, not to mention the coverage.

So I guess what I had in mind, how to do it I am not sure, I hate to recommend an increase in the bureaucracy of Congress, but I do think that perhaps something akin to an entity like the Office of Technology Assessment or something akin to the office of the Senate or House Historical Office. Some body that would have a professional staff, a reasonably small one that could sponsor conferences, that could be a venue for putting together—without the suggestion of an investigation or a hearing kind of format—representatives from the press, Members and former Members of Congress and staff, people from the Executive Branch, people from the university community, to discuss these issues.

The limited experience I have at The Hastings Center with interdisciplinary and inter-professional forums of this kind, and I think Mr. Josephson has had the same kind of experience at his institute, leads me to believe that in the right setting and under the right auspices, these discussions can be very constructive and profitable.

The CHAIRMAN [presiding]. Thank you.

Our last questioner is Mr. Stokes.

Mr. STOKES. Thank you, Mr. Chairman.

Mr. Hess, I was particularly moved by your presentation and the profiles you provided our panel with reference to the newspaper and TV industry.

I would suppose that an industry that can be described, as Mr. Josephson described them as being, considering themselves to be enormously ethical in their concerns about cleaning up Congress and about the ethical-critical analysis of Congress, certainly ought to be concerned about their own house.

In your testimony you tell us about the minority situation with reference to your industry. Now, we all know that the black population of America is 12 percent of the nation, and in your statement you remind us that when surveyed in 1988, minorities have gone from 1 percent to 5 percent but still remain below the national average.

You say the gain is largely from TV, whose 8 percent is twice that of newspapers, and the movement in group-owned newspapers was slightly better than in independent newspapers. Even with reference to the small percentage, this 5 percent, you tell us further that this suggests there is still a two-for phenomenon in the news business whereby organizations prefer women to men in minority hiring and take credit for two appointments with one job.

It would seem to me there is something relatively hypocritical about that in an industry that is so concerned about Congress and its ethical conduct.

Do they see this problem in their own industry as having anything to do with ethical standards?

Mr. HESS. Yes. The new president of the National Association of Newspaper Editors I think has made this his number-one priority, and has, in fact, just taken a swing around the country going to news organizations in his membership and trying to encourage them to hire more minorities.

If I remember correctly, I recently read an article about it in "Editor and Publisher." He did not come back overly optimistic about the reactions he found out there, but as a national organization, they are working at it.

There have been, of course, suits, legal actions, taken over the years, both in terms of women hiring and minority groups. So it is not a record that they are proud of. I should say it is not—I lump these in two big categories, TV and print. I could divide it further because it is different otherwise.

For example, public radio is very good, much, much higher than these figures, something like 41 percent, women, blacks and so forth. You might say partly because it is so low paying maybe, I don't know, but nevertheless, not all organizations are equally deficient. Wire services, AP and UPI, were notoriously bad, were sued, lost a big suit, settled out of court to a group of AP women, and since then have done exceptionally better.

Part of the reason, for example, why chains do better than independents relates to one chain, and that is Ganett. Ganett has made it part of the criteria by which executives get bonuses—their records of hiring women and minorities. When they did that, it was amazing how they could suddenly find qualified women and minorities, and of course the interesting point that I make in this, in the section both on women and minorities, is that they didn't have to reach. They were talking about experienced journalists who had just as much journalism education. Interestingly enough, even on the question of highly-selective schools, Harvard and Stanford and so forth, where there was a distinct difference between minority and majority 10 years ago, there wasn't in my figures now. So there is no question that there are talented people hired and those organizations that really do care about it have found them and are doing much better than others.

Partly it does reflect very small papers. The overall figures most often are brought very far down because of papers with circulations of 10,000 and under.

Mr. STOKES. Well, as a follow up, would you think the heavily predominant white male profession also lends itself to some of the negative reporting that the black community, the minority community perceives. They are largely portrayed in a more negative fashion rather than a more positive manner, including even here in the Congress where the Congressional Black Caucus finds it very difficult to have the types of things that they are doing in the Congress portrayed in any type of a positive manner.

For instance, the Congressional Black Caucus budget, which we happen to think and it is acknowledged by many of our colleagues as being a very well-crafted, intelligently done document, when released to the media receives very little attention and is very seldom reported on in any positive manner. That type of thing.

Wouldn't you think that this situation also dovetails into that?

Mr. HESS. I think more of that gets reflected at a higher level. I mean a good reporter, whether black or white, should be able to cover any story quite competently. I wouldn't ask a black reporter any more than a white reporter whether they felt they could cover that story well because of their race.

On the other hand, there is no question that we are all particularly interested in certain things because of who we are. Therefore we would lobby for more stories about the things that we find interesting, and for that reason, if only for that reason, a greater mix representing the population would be very useful. To that degree, I was actually claiming that the press here in Washington is moving toward that.

Perhaps the rate of change is not all that we would want, but there is no question that it was more representative of the country at large than I had seen it 10 years earlier.

Mr. OBEY. Would the gentleman yield on that point?

I would like to endorse everything Mr. Stokes just said with respect to that Black Caucus budget alternative. But I think it is broader than that.

What I see in the press, and this goes for print as well as TV, especially with respect to economic stories, I see them reporting the Congress simply in terms of who is going to win or who has won or which of the dominant forces are going at each other in Congress on any one of these issues. I see very little mention in most stories on Capitol Hill about other alternatives besides the two major alternatives that have the best shot at winning.

The problem with that is that the substance of issues that are trying to be defined in terms of tomorrow are never really covered on Capitol Hill.

I think there is a narrowing of the coverage that occurs. I think there is a middle bias and a power bias to the stories written, especially on economics on the Hill, with very little attention paid to the policy implications of people who for the moment may seem to be a bit far out, but I would predict within five years would be mainstream in terms of how we deal with these issues.

The CHAIRMAN. We have another panel and I want to move along.

Lou, do you have any further questions?

Mr. STOKES. No. Thank you, Mr. Chairman.

The CHAIRMAN. Thank all of you for your willingness to be here with us today. This should be the beginning of the dialogue. Maybe we should be part of the sessions these centers and institutes have held and will hold in the future. I think that is really appropriate for all of us, both for the press and the Congress.

Thank you for your stimulating presentations today.

The CHAIRMAN. Now I would like to bring to the table three members of the press: Tom Oliphant, columnist for the Boston Globe; Sara Fritz, a congressional correspondent for the Los Angeles Times; and Ken Bode, formerly a news reporter who directs the Center for Contemporary Media at DePauw University. It is Oliphant to the left. Sara in the middle. Ken, you are over on the right.

Why don't we begin with you, Tom.

STATEMENT OF TOM OLIPHANT, COLUMNIST, THE BOSTON GLOBE

Mr. OLIPHANT. Thank you.

For a text on press-Congress relations this morning, it seemed to me that the final dialogue Voltaire wrote for Dr. Pangloss and Candide 200 years ago catches the present mood about right.

Representing the press, the frustrated romanticism of the good doctor gushes forth: "There is a concatenation of events in this best of all possible worlds: for if you had not been kicked out of a magnificent castle for love of Miss Cunegonde: if you had not been put into the Inquisition: if you had not walked over America: if you had not stabbed the Baron: if you had not lost all your sheep from the fine country of El Dorado: you would not be here eating preserved citrons and pistachio nuts."

Representing Congress, the more worldly Candide replies, "All that is very well, but let us cultivate our garden."

It strikes me as presumptuous to try to cultivate your garden today. It also strikes me as presumptuous to dwell at length on the good that my business does—for the country and on this Hill, particularly in this difficult year. I thought it might be more useful to dwell for my few moments on some recent trends in journalism here that disturb at least a few of us because they could threaten our relationship with the same public you serve.

One, we are beginning publicly to traffic in rumors. As a baby 23 years ago, I can think of at least two city editors who might have hit me had I turned in a story that attributed anything in it to rumors. I was told that on occasion my job would be to look thoroughly into a rumor, and that if I could verify it to my editor's satisfaction it would make the paper; if I could not, I was told to forget about it. That standard no longer applies.

On at least four important occasions in the last two years alone, rumors have effectively driven coverage of sensitive situations. In June, despite a plethora of good intentions, a smear directed at the highest official of this body was given national circulation as a rumor.

Two, there appears to me to be a breakdown occurring in our fragile restraint mechanisms. Individual journalists and individual organizations, not totally unlike prosecutors, are selective in their decisions about what they pursue. In this age of Nexis, The Hotline, and their impact on already strong competitive urges, however, decisions not to pursue certain matters or deal with certain sources have been effectively overruled by other organizations making different decisions.

To link this problem to the rumor trend, the people who jerk us around for a living have discovered that there is no better way to do so than to plant not a simple rumor, but a rumor that a certain news outlet is about to go with a certain story. On occasion, the least among us are setting standards for the rest of us.

Three, we have always had a problem in our relationship to investigative bodies—criminal, civil and ethical. Our historical behavior has tended to give greater prominence to charges than to refutations. Given today's highly sophisticated techniques of media manipulation, which we don't report on enough, this problem is becoming more serious.

Just this year, and with regard to this body, there have been reports of criminal investigations of Members that may have involved politically driven conduct by the authorities. Setting the record straight is not one of our strong points historically, and that is not a minor point in the context of such recent press-coverage controversies as Koreagate, the House page allegations, suggestions of significant illegal drug use, and our general treatment of the pay issue and foreign travel.

Four, we have plunged into your private lives with a minimal awareness of why we are doing so, what we are looking for, and whether some of our techniques are proper. At least in part out of self-protective urges, many of us argue that no aspect of your lives may be considered private. At most news organizations, guidelines are either nonexistent, inconvenient, retroactive or resemble Swiss cheese. In practice, I cannot tell you that there are any broadly applicable rules, a fact that I am sure appalls you and, for what it is worth, disturbs some of us.

In part, this is the nature of life in a constitutionally protected business. Out of an essentially unregulated smorgasbord of behavior, the public is far better served than it is either in societies that lack freedom or in the genteel but suffocating restrictions of modern Britain.

However, it is in the nature of the American beast for power, including our own now considerable power, to be met by checks and balances. I believe with the late Hugo Black, that with regard to the First Amendment, "No law means no law." However, I also believe that its provisions can bump into other areas where the law is not silent, notably privacy and libel.

The generation of journalists that has grown up since the case of New York Times Company versus Sullivan may be a bit too smug. In my own recent conversations with lawyers a couple of points have been made: Our recent habit of rumor-writing could be construed as meeting the "reckless disregard for the truth" standard in libel law; and it is possible that some so-called public person may argue successfully some day that a public life can have a private zone.

My purpose this morning is to suggest that my business is not immune from problems that directly concern the difficult task you have been assigned. In a way, I envy your opportunity better to define standards of official conduct in this House and to enforce them. Our blessing and our curse is that we can't do it in our house. What we can and should do is encourage more rigorous examination of our practices, and listen to serious criticism more carefully than we currently do.

The CHAIRMAN. Thank you very much, Tom. I appreciate that introspection.

I would like to call on Sara Fritz.

STATEMENT OF SARA FRITZ, CONGRESSIONAL CORRESPONDENT FOR THE LOS ANGELES TIMES

Ms. FRITZ. Thank you.

I welcome this opportunity to discuss press coverage of congressional ethics because I believe there is a fundamental misunderstanding in Congress about the role of the press. Many times in the last year I have heard Members of Congress say that the press is out to get them, that the press has developed a new preoccupation with congressional sleaze, that reporters have gone crazy on the ethics issue. This is nonsense.

What you are seeing in the press these days is nothing new. Nor should it be surprising to those of you who have served in this institution for a few years. What you see is simply the result of a fine, old tradition in American journalism—careful scrutiny of individual Members of Congress by the press, especially by their hometown newspapers.

Look at the story of Jim Wright, who would probably still be Speaker of the House today were it not for the work of a few hardworking reporters on the Fort Worth Star Telegram. The ethics committee charges against Wright were based almost entirely on reporting initially done by David Montgomery and his colleagues. And there is nothing especially new or different about the way that Montgomery doggedly uncovered every aspect of the Speaker's political and personal life. Hometown newspapers have been doing that for years. Montgomery may do it better than most.

I realize that some hometown newspapers have been too cozy with their local Congressmen. And some Congressmen have been successful in co-opting the hometown reporter. But there have always been many good, independent reporters making their daily rounds on Capitol Hill and following every move of their local Congressman. And I would argue that this is their responsibility as journalists. The voters who sent you people to Washington are counting on these people to keep tabs on you. Some things have changed in recent years, however.

First, congressional reporters have more to cover on the ethics front now than we did in the recent past. While it is true that Members of Congress are generally more honest than they were at other times in our history, there has been a perceptible deterioration in the ethical standards of Congress over the past decade.

Since the current rules were written in the mid-1970s, Members have increasingly learned to exploit loopholes in the rules. Honoraria flourished because of the rules on outside income. And when many Members reached their limit on honoraria, they found clever ways to use excess honoraria to their benefit as well.

When Members could no longer take advantage of all the opportunities available to them for all-expenses-paid trips to posh resorts, they devised ways to get special interest groups to pay for travel back to their home districts. I daresay that the book-publishing loophole that Jim Wright was using would be growing in popularity today had the former Speaker not got caught at it.

Second, we in the print press have the increased competition from television. The television networks have never covered Congress as closely as the print media, but they are getting much better at it. And television, as you know, often focuses more on personalities than on issues. In fact, this is a trend that many Members of Congress have learned to exploit to your own political advantage.

Thus, it should come as no surprise to you that whenever there is a sensational story about an individual Congressman in the news, it now gets picked up by television networks and broadcast nationally. What once might have been a strictly local story in the Congressman's home state becomes a national story. And in response to television, the newspapers with national orientation like my own are more likely to jump on the story than they did back in the old days.

I admit that the press has a bad habit of piling on when a Congressman is in trouble. Under normal circumstances, we are usually very, very cautious about writing stories that suggest wrongdoing by Members of Congress. But when a story like the Jim Wright affair becomes a competitive story on the national media, there will be a rush by everyone to break the latest development.

This creates an unfortunate two-tier system in which the behavior of some Members of Congress gets closer scrutiny, while the activities of others gets almost no scrutiny at all. This is sometimes unfair, but I do not think we err in scrutinizing some Members too closely. We err in not scrutinizing everyone as closely. The goal to strive for, in my view, is to bring everyone under the same microscope. It is a difficult task, but some news organizations are currently trying to do it.

Another complaint I often hear is that the press does not understand the complexities of the ethical dilemmas facing Members of Congress. The news media tends to take a simplistic, civics textbook approach to congressional ethics. And I would agree that most news stories on this subject do not take into account the complexities you face.

But I think that is true about news stories regarding almost any subject. News stories, by their very nature, are somewhat simplistic. In fact, an important part of our job is simplifying complex issues so that they can be understood by our readers.

I think you have to accept as a fact of political life that whatever you are going to be doing is going to be explained by the voters in the simplest terms. Thus, your behavior must be able to withstand that kind of analysis. If you take money from a special interest group and then go to bat for them, it should not come as a surprise to you that someone might construe it as cause and effect. Nor should you be surprised when someone writes a story suggesting that you enriched yourself personally in office—even if you needed the money to care for your sick grandmother.

Over all, however, I think Members of Congress sometimes overestimate the power of the press. They assume that if we write about something, people will accept the story without question.

This assumption was clearly disproven earlier this year by the twin issues of pay and honoraria. I think it is fair to say that the pay raise received remarkably favorable coverage in the national press, primarily because it was tied to a ban on honoraria.

The Los Angeles Times was one of many newspapers that editorialized in favor of it. But judging from the polls, the press coverage had little or no impact on public opinion. Likewise, there is no evidence that an unflattering story about you in your local newspaper is going to cost you the next election.

Our readers are capable of making independent decisions about what they read in the newspapers. We are in the business of giving them the information to make those independent judgments.

As a reporter, it is not my role to tell you how to revise the Rules of the House regarding ethics. But there are clearly some things you could do to ease your problems with the press.

You could help the press to appreciate the complexities of congressional ethics by cooperating when reporters want to write about these issues. Most Members shrink from coverage of their own personal ethical and financial dilemmas. You are understandably afraid to expose yourself that way.

I think you could take a lesson from Congressman Bob Matsui, who recently told The Wall Street Journal all the details of how he erred in supporting a tax break for the utilities in 1986. That story shed more light on the ethical and moral dilemmas of Members of Congress than anything I have read. But how many people are willing to step forth the way Matsui did and admit making a mistake?

Most news stories about ethical wrongdoing in Congress are derived, at least in part, from the financial disclosure reports that you are asked to file every year. Congress has chosen disclosure instead of an outright ban on outside income. If you cannot withstand the press coverage generated by disclosure, perhaps your only alternative is to move to an outright ban.

In addition, you clearly do not do yourselves and your colleagues any favor by preserving a system in which the House Ethics Committee often takes more than a year to investigate simple charges against Members. You guarantee that the charges will be repeated in the press time and time again until they are resolved. Unless you can come up with a more efficient investigating process, you ought to come up with rules so strict that there is no need for complex investigations.

The current disclosure requirements also are too lax, in my opinion, especially if they are to serve as a deterrent to wrongdoing. In the Senate, Members must report the details of trips taken at the expense of special interests—dates, places and duration. Such rules should apply in the House as well.

Likewise, if you are going to depend on disclosure to discourage wrongdoing, you need to ban blind trusts. The only people blinded by them are the press and the public.

One other suggestion I would like to make is the one made by Mr. Jennings which dealt with having some sort of mechanism for educating the press and the public about ethics. I am not certain that you actually need a new committee or panel, but one thing you could move toward is having a person on the ethics committee who could talk to the press.

It has become almost a joke among Members of the press that when you call the ethics committee and ask a simple question like, what is the rule on this, the response is, why do you want to know? We can't tell you. Or, it is too complex. And perhaps if you want to improve education, you might find somebody who could talk to reporters on what the rules are and how they have applied over the years.

I would like to respond to two things that have been said earlier in today's hearing. One, I want to respond to Mr. Obey's rhetorical question. While I recognize that that view that he expressed is prevalent in journalism, I don't think it is as prevalent as you might imagine. But I want to explain where I think it is coming from.

There are a lot of journalists in Washington, and particularly editors and news directors, who have never, never covered Congress. It used to be the case that reporters started covering Congress and moved up the ladder. That is no longer true. And so you have a lot of people who don't understand how to make a story out of Congress. And I think the view that was expressed to you represents a lack of imagination about how Congress is a story in this town.

I also would like to comment just briefly on the whole subject of delving into private lives. I think we have overestimated how that is done. While it has been done in a couple of cases in the last year, still generally the press holds the view that the private lives of public people are only a matter of news if it affects their public performance.

The CHAIRMAN. Thank you, Sara.

And last, Ken Bode. Mr. Obey said he didn't recognize you, Ken, but we know you are enjoying the groves of academia.

STATEMENT OF KEN BODE, DIRECTOR OF THE CENTER FOR CONTEMPORARY MEDIA, DEPAUW UNIVERSITY

Mr. BODE. I am now ducking Obey the way he ducks me.

The CHAIRMAN. He doesn't duck the press very often. You must have been effective in dealing with him.

Mr. BODE. In 15 years of covering politics and government for NBC news and The New Republic magazine, I spent more time than expected on the ethics beat, most of it recently.

In the past few years, we have seen one presidential candidacy destroyed by womanizing, another by plagiarizing, a Supreme Court nominee forced to withdraw because of marijuana use, a nominee for Secretary of Defense rejected for a combination of alcohol abuse and conflict of interest, and a Speaker of the House resign in the face of ethics allegations.

This doesn't count the myriad other ethical scrapes, from one Member using another's automatic voting card to a case of alleged sexual harassment or other cases of sexual improprieties. And it doesn't count HUD or what one of your Members called the "cover-ups, conflicts of interest and plain, old-fashioned corruption" that came to light in the Executive Branch in the past decade.

It also doesn't count political scandals in state houses, state legislatures, courthouses, city halls and at the polling places around the country.

And when the congressional pay raise was presented on a "no vote" basis, even linked to the abolition of honoraria, it also took on the coloration of an ethical question. The radio talk show hosts loved it.

We seem to have been on an ethical binge that has strained relations between the press and politicians. Seemingly, it also has produced some new rules for standards of conduct and coverage.

Many of us who covered the demise of Gary Hart's presidential candidacy were troubled during and after by a process that forced us to make daily public judgments against the pressure of deadline about what portions of a politician's private behavior were relevant for publication or broadcast.

Were we applying more stringent standards of conduct than in the past? If so, why? Were some of the techniques used in getting information about Gary Hart precursors of a more aggressive, intrusive relationship between reporters and politicians?

Journalists are not trained, often not practicing, moralists, and we were troubled by having to be the arbiters of new standards of political behavior which would never be directly applied to ourselves. Therefore, when it came to the Tower confirmation, we were glad to have 100 Members of the Senate involved, all practicing politicians who understood they were setting standards that might later be applied to themselves.

The case for and against John Tower was compiled in an FBI file—much of the information undigested and unverified—to which Members of the Senate and a few others were permitted access. Nevertheless, allegations of womanizing, boozing and conflict of interest moved from that file to the newspapers and networks with dazzling speed. Unverified charges and rumors were leaked, broadcast and published, sometimes only to be withdrawn the next day. Confronted by questions of confidentiality presented in the FBI file on John Tower, the Senate did not acquit itself particularly well. Nor did the press. Far too many unproven allegations leaked, far too many reported.

Because there have been so many scandals in so short a time, coverage has become more intense, ethical improprieties command more space and more air time.

Also, press questioning is more intrusive and penetrating. Immediately following the Gary Hart episode, many of us grappled with questions about the limits of privacy in public life.

What does the public have a right to know? What constitutes an invasion of privacy by any standard?

Happily, The New York Times helped us by sending a questionnaire to all presidential candidates asking them to waive privacy rights and permit that newspaper to obtain investigative files from the FBI as well as the candidates' medical records, both mental and physical. The candidates knew that was going too far and so did everyone else.

Eventually a consensus seemed to emerge around the "moral" questions of a candidate's private life, a consensus governed by considerations of probable cause and a statute of limitations. But that consensus is fragile and not always easily applied.

For example, if one candidate in a race for mayor is a suspected drug user, must all candidates face questions about drugs regardless of any specific reason to believe they are or ever were users?

Another by-product of the ethics binge is rising public skepticism about politicians in general. When there is an allegation of impropriety, it becomes increasingly difficult to get an impartial hearing.

In the current public mood, there seems to be a presumption of guilt, not innocence, a presumption that often deepens as daily events unfold in the press.

In the end politicians feel they have endured two trials, one in a courtroom or by congressional investigation, the other by media. They know they can win one of those and still lose the other. You ask us today to consider whether reporters covering politics in government have an ethical obligation to consider the consequences of their reporting in terms of how it shapes the long-term public perceptions of an institution like Congress.

My answer is, yes, we do, in at least three ways. First, that obligation includes reporting events fairly and accurately, be it a sex scandal or a pay raise. In the highly competitive news environment that exists today, mistakes when they are made, are magnified enormously. When one paper reports something that cannot be independently verified, it is often repeated with credit to the original source. If it turns out to be wrong, retractions and corrections rarely get the same prominence.

Also, when we report on ethics, reporters should be careful not to imply that the individual transgressions of Members reflect the standards of the institution. Nor is it fair to imply an institutional indifference to standards of conduct. Over the past decade the House Ethics Committee has operated in an effective, nonpartisan fashion. And, parenthetically, it leaks less than just about any committee in Congress.

Finally, we need to eliminate the cheap shots and stay away from misleading cliches. The most enduring cliche of reporting on Congress is that foreign travel always equals "junketing" with the connotation of a luxurious boondoggle. For some time, the memory of Mickey Leland should discourage that kind of reporting.

I would like to address a few other things before I stop. I know there has been some murmurs among colleagues in the press whether we should be here talking to you today. My answer is, of course, that we should be by the fact that I am sitting here.

I think that probably Members of Congress deal more with the fourth estate than they do with the other two branches of government, more with the press than with the administration, and certainly the Supreme Court. I probably wouldn't be here if I were still working for NBC news because I understand there is a bureau policy against reporters coming to testify before a committee of Congress.

I also understand that the standards of virginity in journalism are much higher than in most other forms of life. But nobody is paying me for my opinions and nobody is forcing me to be here. But I think it is time for a dialogue because we do spend a whole lot of time on ethical questions.

Second, I would never attempt to answer Congressman Obey's—was it a hypothetical question? A rhetorical question?

The CHAIRMAN. He admits it was rhetorical.

Mr. BODE. The press rule is you never answer rhetorical questions, just like a politician's rule is you never answer hypothetical questions. I have no idea who the correspondent was who talked to you about a New York editor. But I know that editor because I have talked to that editor many times.

That is our problem as reporters covering a very intricate institution like Congress, covering a field like politics, where everybody hasn't had the same experience that we have had.

I have had an editor change my report when I was reporting on the LaRouche candidacies that were filed all around the country for Senate and Governor and so forth, from saying that 53 people have filed LaRouche candidacies for Congress, to 53 have been nominated for Congress.

I had to explain to that editor the difference between filing for Congress and being nominated for Congress, and the whole reason we were doing this story was that there was one who was actually nominated in Mrs. Martin's home state. Our problem is to educate these people. I have had an editor interrupt me when I was discussing the charges brought against Speaker Wright to say, "Sleeze, sleeze." And I had to say, "Wait a second. These aren't proven. These are just charges, and we have got to deal with this in a balanced fashion."

So there are presumptions about Washington that do permeate into the networks, and I am sure into the desks of national newspapers, from people who have never covered this city. That is our problem as reporters to keep those editors educated and keep the story on course in a balanced fashion.

Third, I would like to address one last subject that came up in the earlier panel, the subject of honoraria. I think reporters have to begin to address this question of whether we shouldn't voluntarily submit to the same standards required of Members of Congress, even if we have no legal obligation to do so.

For example, if there is something improper about a Congressman accepting travel or accommodations or a speaking fee from a special interest group, which is fully reported, is it any more proper for a reporter to take what sometimes is even a larger fee for a speech to the same group? If there is an assumption that a Congressman cannot cast a disinterested vote after such a fee, is a TV correspondent not similarly compromised?

I know there is a growing resentment about this on Capitol Hill, and I think it is understandable. If journalists expect to be afforded the presumption that they approach their jobs objectively, then they must not only avoid compromising themselves, but also the appearance of being so compromised.

Thank you.

The CHAIRMAN. Thank you, Ken. Thank all of you. You know, I really regret that we have so little time really this morning to just scratch the surface of what I think is a very important issue, important to the future of our democratic process, our representative form of government.

Mr. Obey and I were talking briefly a minute ago about access because the subject came up in the first panel. Are we selling time, are we giving people in the third house, not the fourth estate but the lobby community, more of our time if they are contributors, for example.

It struck both of us that we spend far more time with the press than we spend with people who are supposedly lobbying us. Now, that is partially because we are self-promoters by definition. We have to run for office every two years. But it is also because most of us have this yearning to explain what is happening, this educational element which makes us want to convey to you information which hopefully your editors will allow you to convey to the public, and sometimes, of course, something happens between here and there.

But I think it is indicative of the fact that for most of us a good deal more of our time during each day, and it is very little, that we have to return phone calls of any sort, goes probably to the press immediately after the people who we represent directly. In fact, some of them might fall into second place on occasion, because we think we are getting to more people through you than just one single phone call to them.

It strikes me also, going to a point that Sara touched on, what is the current perception of ethics in Congress, that we are a little bit like the town that hired a new police chief, and I will put you in the role of police chief for purposes of discussion. Suddenly the crime rate goes up because they start cracking down on criminals, and of course the impression is that the town is rampant with crime when, in fact, it may have been cleaned up.

I think we have a real perception problem with this revolution of rising expectations about ethical behavior in Congress. The better we do, the better we have to do, and at some point we simply are going to find it impossible to have a sufficiently pure body to avoid the kind of media scrutiny that we get.

But I really think it is important that we deal with this question of who is typical, and I would like to bring the Mickey Leland instance up in a slightly different context. Somebody did an analysis of the number of times Mickey Leland appeared on television during the 11 years he was here. He appeared 10 times as a black politician commenting on a presidential race, most prominently because he supported Walter Mondale over Jesse Jackson, and once because he was in Ethiopia during the height of the first phase of the hunger famine.

Mickey Leland has been properly canonized in death, but I would say, while he was an outstanding Member, he is, in his own way, not unique among many Members of Congress who pursue very diligently a number of public policy interests which are never reported on until they are no longer around, until they move on to some other place. I regret that because I think it does not convey—even the coverage he got, as Dave Obey said earlier, is who is ahead, who is on second, who is winning today—not the substance of the issue.

He is a black politician. He is not a human being who cares about hunger. I think we tend to have stereotypes and I think we tend to overlook the broader picture here because of the requirements, and I think we have suddenly been struck by pack journalism.

Many of us have read Timothy Crouse's book "The boys on the Bus," and have seen the Meryl Streep movie "Cry in the Dark," about the criminal trial in Australia. And I think many of us have read Tom Wolfe's book, "Bonfire of the Vanities." We understand what pack journalism can do. It is coming to the Hill.

We are still struggling with how to handle it. As one who sat on the Ethics Committee, I am still wondering what I do with a reporter who comes to me and says if you will give me some information about what is going on, I will make sure we write some good stuff on you in our major national daily. I'm not saying that is typical, but it does happen.

It did happen in the context of the unbelievable competition to get a story, and I know many reporters felt very bad about calling me at 11:00 at night saying, "I know the other paper has a story. Can you give me the story?" In fact, it happened to me last night about the story in the Washington Post this morning. So where do we go and where do you go?

We are sort of breaking new ground here. It is not very easy for all of us to be in this kind of setting where we are being asked to lead by example as somebody said earlier, setting standards now in our private life that would serve for the general public.

Believe me, we are not up to that job. We are of the general public and our private life mirrors theirs. We happen to be elected officials. That doesn't mean we don a cloak of purity. That is one of the reasons, Sara, I think we have a hard time talking about our private life, even though it would be instructive, because we all think it is our private life.

While it might be helpful to get one more positive feature story written about congressional ethics, some of us at the last minute shrink from going through that. So I guess my general question is how do we prevent the pack journalism, the competition for the titillization, the story that the editor really wants, from driving us to a lower standard?

I know the Washington Post struggled to avoid the Washington Times story on homosexuals in the White House and ultimately was forced, obviously, to succumb. Competition drove it to do that. Can somebody tell me, let me throw it to the three of you, how can we try to maintain standards which I think many of you in your journals and network entities want to maintain when there is a constant pressure in this new environment of the press to get something a little more interesting, a little more personal, maybe a little less relevant, but a lot more interesting?

How can we—how can you, really and the industry keep that standard before you? Tom?

Mr. Oliphant. It is troubling to realize that whatever decisions you might make as an individual journalist about your standards of conduct that they are almost certain not to have any relevance to what actually happens. That was why I made the point about sometimes the least among us, in fact, setting the standards for the rest of us.

One specific answer that I might make, Congressman, one of the many deficiencies in our business is the absence of coverage of it. I believe that the best thing for most problems is exposure and debate. The press, despite a few very noticeable, but few improvements in recent years, still does an absolutely terrible job of covering itself. And I believe that public figures are far too reticent about airing press issues in public. And because of the change in the power curve in recent years, our influence obviously having increased almost exponentially, I wish the countervailing influence would come into play more because I think it would be more instructive for the public and more of a check on us.

The **Chairman**. You are not advocating we get into an argument with someone who buys his ink by the barrel, are you?

Mr. **Oliphant**. Obviously, the political hazards of that kind of thing are well-known. On the other hand, though, I would cite as a possible example the behavior of officials downtown compared to people up here who I think are a little bit less reticent about going belly to belly with journalists day in and day out, and it doesn't seem to hurt them terribly.

The **Chairman**. Sara?

Ms. **Fritz**. I don't think I am as pessimistic as my colleagues here about this phenomenon. I don't think it is new necessarily, but television has made it more frantic. I can tell you that at my newspaper we agonize about this constantly. We talk about it, and we try to find ways to deal with competition while at the same time holding to the standards, which we think a good story must have in order to appear in our paper.

One of the problems with this is we have certain standards that we refer to until somebody else has a story, and then the standards are out the window, and so we are talking about what standards apply to those stories which we are out to match, and there is a great deal of discussion about that nowadays.

The other effort that we have tried to do, in terms of Congressional ethics, is to pay attention to each and every one of you, to take a lot of time and go over all the official disclosure reports when they come out so that at least this is fair, that we are not just focusing, singling out certain people.

The **Chairman**. Ken?

Mr. **Bode**. Well, the pack journalism thing is certainly a problem all of us recognize, whether you are covering a campaign or you are covering an issue where there is an intense competitive atmosphere, like the John Tower hearings or the Jim Wright matter and so forth, and the pay raise.

I don't know any reporter in my acquaintance who doesn't have the same reaction I had when somebody said to do a story where I wasn't advancing the story, where I was basically sweeping up after the good work of some other reporter.

You get a sort of flush of insignificance that comes over you, but you have to do it any way. You are told that this is the story for tonight, and you have to do it. You don't advance the story at all. What you do basically is you try very hard to buy another day so you can advance the story somehow, and at least step back from being just part of a rush.

I remember coming off the presidential campaign in 1980 when Ted Kennedy was challenging Jimmy Carter and the correspondent who was covering Kennedy at the time said to me, "Well, I did my obligatory 'Kennedy screws up story' today." The "Kennedy screws up story" had been on all the other networks, it had been in the newspapers.

I said, "Who obliged you to do it?" He said, "Guess." It wasn't his idea to do it. He couldn't resist it. He was ordered to do it. One of the things that bothers me about the kind of rush of coverage is the gap that is left after it is over with.

By that I mean the inability we have in terms of time or maybe it is even disposition to go back over and see where we didn't do a job well. We could take Gary Hart, which a lot of us have done. We could take John Tower. We could take Jim Wright. For a moment, let me take Jim Wright.

There is a new book coming out on the Wright affair. Some of you at the table are featured in that book. Troubling things are in that book about what happened with Jim Wright. It turns out that the Wall Street Journal editorial board and Newt Gingrich were talking to each other every day and were almost on the same team.

That, to me, as a journalist, is a troubling thing, even though it is the Wall Street Journal editorial board, and not the news team which I am sure would have avoided that completely. The Washington Times reporters sat in planning and strategy sessions with Newt Gingrich in the early days of that. I don't think I agree at all with Sara in terms of assigning the weight and balance of who did the most damage to Jim Wright.

I think certainly it was a Member of Congress rather than Dave Montgomery, and that is not to in any way demean Dave Montgomery's coverage. It was very good. In that book Congressman Livingston is quoted as having said at one point, having read the Gingrich charges, that there wouldn't have been anything to this if Newt hadn't been able to manipulate the press.

I don't know if that is an accurate charge. It is going to be in print shortly. If it is true, that is a problem for our professionals. Another person who is quoted I think, in a way that we ought to look very hard at in retrospect is Mr. Phelan, who said, "In Washington, media is everything." That's not the way it is supposed to be.

We need time to look back at events like that after the events are over with. We need to look introspectively at our coverage, where we got our sources, whether they were reliable, and what we went on the air with for broadcast, and what we had to withdraw or what we found out was wrong later.

Unfortunately, in the press of business in an institution like this, when you have two or three people from a major news outlet covering the entire body or in some cases some papers have one person covering for several papers, there isn't time for that kind of introspection. Which is why not only this kind of session is useful, where we can get a couple things off our chest and you can ask the follow-up questions, but the seminars that Ellen Hume might run or Mr. Jennings are also useful.

The CHAIRMAN. I am going to yield to Lynn for her questions, but I just wanted to say, Sara, I particularly think you took the assignment to heart and in effect said don't whine, you know, here are some things you have to look at. And I appreciate that very much, but I did want to just say one thing.

I think if you cover Congress ongoing, as a part of your beat, you can get hardened, just like a policeman on the beat in my analogy to the criminal justice system of a few minutes ago. You say in your testimony, "I dare say that the book publishing loophole that Jim Wright was using would be growing in popularity today had the former Speaker not gotten caught at it."

I think that is a little cynical. I really don't believe the defense, "we all do it," was appropriate when it was offered by people supporting the Speaker, and neither do I think it is appropriate to assume that people will find loopholes if they are only given time.

I think 99 percent of the Members will never write a book, let alone have their staff compile one, and 99.9 percent of them would not pursue that kind of approach. And I am sure that those, like Mr. Obey, who wrote the original rules relating to copyright royalties, could attest to that. So don't get hardened to the process to the point where you see problems where I don't think they are.

No question we will continue to warrant the kind of scrutiny that we are going to get, but I don't want the public to think, and I certainly would hope our friends in the press who we keep at arm's length most of the time, won't be so quick to assume that we will do what is wrong if we are given a chance.

I don't think that is the way most Members of Congress act. Lynn?

Mrs. MARTIN. I don't, either.

In this best of all possible worlds I had always thought of Candide as a Member of Congress rather than the reverse. Isn't that amazing how we view things from our own perspective. I was very nervous about this hearing. I mean, I don't really think it is our job to tell the press what to do, but it is still so good to see all of you.

You said something about you thought all of us should get the same attention on our disclosure forms. That is fine with me. I don't happen to have lots of financial interests, you know, mortgages and kids, so there is nothing in there that is going to affect me in that sense, but I hope that is not the only thing I ever read about Congress all year.

That takes a lot of power, man and woman power, to be looking at all this stuff, and you have to, but that also means that that is already the direction of where things are happening in Congress. So that if disclosure, which should in effect be almost a guarantor of better behavior and not conflict of interest, if that is the story, you know, he goes on a trip or whatever, I hope there is more to Congress. And I hope you send all your people looking at the Budget Committee once or looking at the Rules Committee or looking at why the budget by the Black Caucus isn't a good idea or is a good idea.

I think that is the stuff that we are getting a little more worried about, I think, than disclosure. I don't think most Members really care—you can disclose almost anything you want about us. I am glad to hear you think there are some bounds with families because I have got real questions about that, too, and I don't have any answers to it.

Obviously if you have your kids with you on the platform when you announce, then you know, they are part of you. Is that part of what you discuss? I think the press has been overall very careful about families, and understandably so.

But I guess the one thing that I am hearing lately—maybe I am just going to a different level—is members of the press are saying to me and other people advising me, to go off the record.

You know, I haven't gone off the record ever until about a couple weeks ago. I have always said, "Hey, you get it all one way or another." But to go off the record.

So it is not my name? So it is somebody said? I am almost more worried about that than about somebody writing a bad story about me. I will live with that. You get good columns, you get bad paper and you get good. It evens out, I hope. That is the best of all possible worlds.

But I am worried about this more and more. Members say, you and I know of them, they are never quoted but they are on background, therefore, good things happen to them.

I mean, maybe it should be either you say it or you don't. I just want your comment because I am so curious about it. It is coming up so much lately.

Mr. **Bode**. There is a debate in the journalism profession ongoing on that all the time. I don't know what made you decide to go off the record for the first time two weeks ago.

Mrs. **Martin**. I was with somebody who did, so I went ahead. I said nothing that was worthwhile one way or the other. But it just was amazing to me that that question came up. I had never had it before.

Mr. **Bode**. In the Carter Administration when the Washington Star was still publishing, there was a controversy between Califano and the White House at one point. One of the people at HEW agreed to talk on condition that his name not be used, and the story was published, and with the story was a picture, and the cut line under the picture was HEW official who agreed not to talk on condition——

Mrs. **Martin**. You are kidding me. Is that true?

Mr. **Oliphant**. A famous briefing was conducted by Henry Kissinger in the White House during the Indian-Pakistan war in 1971, identified as a senior White House official. Then Senator Goldwater was so impressed with Dr. Kissinger's erudition that he put the entire transcript of the briefing in the Congressional Record.

The **Chairman**. That would be an Ethics Committee case today.

Mrs. **Martin**. Is that more common today?

Ms. **Fritz**. It is common. There has been a a lot of handwringing about it, particularly take the Wright case, for example. Almost all of the stories that were written about Members of Congress saying that Jim Wright is a dead duck had no sources named, and yet it wasn't very hard to tell who those people were because virtually everyone would say that on background.

I think that there is a problem with that. Then again that was a way that Members of Congress sent a message to Jim Wright.

Mrs. **Martin**. Is this becoming more and more the basis of everything? It takes more courage to say, hey, I am saying this. I am Lynn Martin. I am Vic Fazio. I just said this, or to say to you, frankly, no comment.

Ms. **Fritz**. You know, on background serves some purpose, but you said something that is very telling, and I think it is kind of a prevalent view among Members of Congress that if you go on background and say lots of good things that, as you put it, good things happen to you.

There was a Member of Congress who really thought that nothing bad could happen to him because he was one of the best schmoozers in the Congress, and he is no longer with us today because he thought that only good things happen to you if you were real buddies with the press.

I don't think that that is necessarily the case. You cannot escape the scrutiny of the press by simply sitting around talking on background.

Mrs. **Martin**. I was not suggesting that you could do bad things, but I was suggesting that more and more I am reading that. And since I am now hearing it, I am assuming that rather than have anyone stand behind saying something that is difficult or hard, you end up in this amorphous background thing, and the press rightfully protecting its sources is never going to suggest that you are doing wrong. But I am a little nervous about it.

Ms. **Fritz**. I am glad you are. What we are looking for is more people to be on the record.

Mr. **Oliphant**. If I could make a final point about it, one reason why I was very happy to respond to the invitation to come here today, as the Congressman said in his opening statement, is because a great deal of conversation on this topic occurs between the press and public officials behind so-called closed doors.

Some of us think the public has a right to know a little bit about it, too.

The **Chairman**. Thank you, Lynn. We have 15 minutes. I want to do something that will allow everybody else on the panel to get a question in and hopefully some answers. Let me start with Lou Stokes, since he was last with the first panel. Then we will go to Bob, then to Dave, then to Don. Let's see if we can all get it in within 15 minutes so everyone can take some relief at 12 o'clock. Lou?

Mr. **Stokes**. Thank you very much, Mr. Chairman.

I would like to follow up on the Chairman's question. I must say to you respectfully I am a little disappointed that the panel did not respond to his question with reference to Mickey Leland. I recall at Mickey Leland's funeral, Reverend Jesse Jackson, who eulogized him, made one of the most poignant statements I have ever heard.

He said Mickey Leland was as great 30 days ago as he is today, but nobody knew it. Vic Fazio made reference to the times in an 11-year career that this man had been mentioned twice in national news broadcasts. In your comments, your formal comments today, Ms. Fritz, you mentioned the all-expense-paid junkets to posh resorts that Members take.

Mr. Bode, you mentioned the resort junkets and things of this sort. There are a lot of Mickey Lelands in the United States Congress. People don't know it because the media prefers not to educate people about the responsible jobs that people do, the hardworking congresspersons who serve this nation. You prefer to talk about the junkets they take.

I dare say that had Mickey Leland not died on that mountain that he would have been reported as having been on a junket. That, to me, is not only distasteful, I think it is demeaning. I think that it is a failure of the media to really carry out its responsibilities. The same week another congressperson died, working in his congressional capacity. I would just like to hear, is there no remorse about not properly reporting what Congress people really do or in concentrating just on the negative aspects of their work?

Is there any intention to try and correct this type of reporting?

Mr. **Bode**. Well, I would stand by what I said in my statement, Mr. Stokes. I think that one of the things we have got to do is try to report beyond the cliches. The junketing is obviously one of the enduring cliches that comes right out of American government textbooks. It has been there forever.

When I first covered Congress and a group of Members were going some place, I can't remember where it was, I asked, I put in a request to go. I was naive. I asked if I could go along. I was told absolutely not. You can't go along. So it would have been a little easier for me to do a report that was serious and insightful about what Members of Congress do on a foreign trip like this if you would allow the press to go with you.

Ms. **Fritz**. I think it is an object lesson. I think the press people have seen it as an object lesson of how we do tend to think that all trips are junkets.

Mr. **Oliphant**. Congressman, I don't really think that any lesson was learned and that much of the coverage of Congressman Leland's death and funeral involved a kind of self-flagellation rather than any indication of learning from it.

In fact, the size of the so-called news hole is shrinking today. The size of the coverage devoted to Congress is going down, and I couldn't say in all honesty that anything was really learned from this experience except that a lot of people were embarrassed by it and properly so.

Mr. **Stokes**. Thank you very much.

The **Chairman**. Thank you, Lou. Bob Livingston.

Mr. **Livingston**. Thank you, Mr. Chairman. First of all, I want to thank all the Members of the panel for an outstanding and candid discussion on some problems which I know plague most Members of Congress at one time or another, and I would hope that they might plague other members of the press, but obviously you all have thought deeply about it, and I do appreciate it.

Second, let me just participate in my part of the discussion by example. I have a few things that have happened to me, and I will recall two which might take some degree of issue with whether or not we are intruding into private lives and whether or not we in Congress should cooperate.

First, no intrusion into private lives? Well, at the time of the Gary Hart thing, you could say Gary Hart challenged the press and the press responded, and that was fair.

About that same time there was a governor's raise going on in Louisiana, and a Member of the Associated Press, female, called up every single candidate for office, and I think there were nine at the time, for governor of Louisiana. And she said, "First of all, what do you think about the Gary Hart thing?" The response was obvious. "Well, do you think what he did was wrong?" Another response. "Well, is adultery wrong?"

You would think they might stop there, but they didn't. She didn't. The next question was, "Have you ever committed adultery?" Now, I don't know anybody that would admit to anything under those circumstances, but I suggest to you that that is going too far, and it is going way beyond the New York Times issuing a questionnaire.

So I would hope that anybody listening on C-Span might call up the Associated Press and tell them that they condemn that type of reporting. Secondly, should we cooperate, should we go beyond the pale and answer every call that comes in about our personal life or our finances every time that a reporter gets an itch?

Well, I thought it was a good idea. About five years ago the Wall Street Journal came to me and said, "Look, you are married. You don't have independent resources. Your wife doesn't work. You have young kids. We would like you to talk about what it is like for a person under those circumstances to be in the United States Congress and to live on your salary."

It seemed like a good suggestion. I went home and talked to my wife about it, and we just opened our books. We just opened the door, cooperated as much as we could. I was a little hurt when after the responses I got were split evenly throughout the nation; about 50 percent positive, 50 percent negative. I could expect that. And I thought it was fine.

I could take all the responses, but then the Wall Street Journal only published the negative letters in the letters to the editor. I didn't think that was quite fair.

The CHAIRMAN. I don't know if I have ever admitted to you, Bob, but having seen your beaten up station wagon, I had referred that reporter to you. I thought you were a great mark.

Mr. LIVINGSTON. I thought they ought to show that there was an even response. Whether you agree with a Member of Congress, whether you agree with a public official or not, you ought to at least present a fair response to the reaction to the story.

It didn't get out. It came out later that only negative letters were printed, and as a matter of fact most reporters who have played on to that story have played on the negative aspects of the story rather than the positive ones. I think there were positive ones. I thought it was a good story, frankly.

Mr. BODE. Congressman, maybe Stephen Hess could do a profile of people who write letters to the editors. We certainly don't have any responsibility for those folks.

Mr. LIVINGSTON. Well, I thought that the editorial page could have played both sides.

The CHAIRMAN. I would like to see a profile of the Wall Street Journal editorial page, too.

Mr. LIVINGSTON. Well, that is true. Finally, Mr. Bode, let me say the remark that you referred to with respect to Newt Gingrich was made before the Ethics Committee was convened, and I think that is important to understand. I don't know whether it was portrayed that way in the book, but we did look at the press clippings that Newt prompted the investigation with, and had determined that frankly they were just press clippings and not sufficient information.

But because he did—and I don't recall using the word, "manipulate"—but encourage editorial review of those press clippings, calls for the ethics investigation were made and ultimately the committee made its own determination, but I would stress that my remark was made before that Ethics Committee ever made its final determination.

Mr. BODE. I knew I could get a little research done here today.

Mr. LIVINGSTON. Thank you.

The CHAIRMAN. Don, do you want to go? We have a vote in about seven minutes. This one is actually on something of substance, a rule and not just on the journal of yesterday's proceedings, so I think most of us will want to be there. Go ahead.

Mr. SUNQUIST. I will try to keep my remarks brief. I apologize; I may not be here for all the answers.

I do appreciate your being here and I know there is some pressure not to appear at these kinds of gatherings, and the frankness of your remarks and the fact you differ so much on the subject we are talking about. I would like to see a debate between Ms. Fritz and Mr. Oliphant. There are some differing views there and it is very interesting, and I think it is healthy.

Too often in the Congress we like to see bad things printed about our opponents or people on the other side of the aisle, and then we complain when it happens to us. I think that is a weakness that we have, and I think there ought to be more coverage, as Lou Stokes said, about the day-to-day life of Members.

Now, the question that I have goes back to, Sara, your comments that the perception, even though Members of Congress—I am paraphrasing it now—are more honest than perhaps in the past, the perception is that there is a deterioration of their ethics and has been over the past decade. Here what we are trying to do in this panel, it is sort of a thankless task, although it has been very bipartisan and we have not had real problems, what we are trying to do is to change the rules.

And a major part of that is, how do we put them into effect? How do we sell the public on this and how do we answer the criticism we receive from the media and how do we take that process now? Perhaps I am now asking you to walk in step with us, but how do we get some help from the media to put into effect these things so that the crazy talk show hosts, and they are not all that way but there are a number of them, don't end what we are trying to do and make a story out of something that is happening?

In earlier testimony we heard somebody's concern that Congress is going to end up on one end, the Mother Theresas and Ralph Naders and on the other end, the Donald Trumps. That is the problem we face. The people we want in Congress won't be here unless we end honorariums. We can get the pay up. That is where I am headed.

How shall we proceed in a way that might get balanced coverage in the media that will at least not destroy what we have been trying to do over the past six months?

Mr. OLIPHANT. I am afraid you may have finally reached the boundary of our ability to help. I mean the basic answer I think has to be, you do it and we will cover it. I don't think it is proper to go beyond that.

The CHAIRMAN. Could I interrupt for a second before I go. I have to leave and I wanted to thank all three of you for accepting our invitation. I know Ms. Martin and Mr. Obey are coming back.

I just wanted to say, Sara, I think a number of the proposals you allude to in your remarks may find their way into this package. I thought that was perhaps of some newsworthiness.

Thank you all.

Mr. **Sunquist**. I have to go in a minute, too, and I respect, Tom, your comments.

Mr. **Bode**. In fact, none of us feel that issues like the pay raise were ever fairly treated by the talk show hosts and most of us, while we can deny they are protected by the same sorts of standards of First Amendment Rights and so forth as the rest of the journalists, don't consider them to be doing the same job that we do and don't like, frankly, being lumped together with them in Members' anger over the way the pay raise was covered.

Mr. **Sunquist**. I think you all balanced it for the most part. I think the problem we had was people stirred up by talk show hosts.

Mr. **Bode**. When I first came to Washington and began covering politics, I went to the Senate one time to find a financial disclosure record for a campaign. I found all the Senators' campaign financial disclosure records in one single file drawer. I was permitted access to it; one file after another had a Senator's name on a single piece of paper, nothing received, nothing spent. We have come a long way from those days.

Ms. **Fritz**. I agree with Tom; we are getting into things we probably ought not comment on. I think it is possible to say the obvious, which is if the reports in the newspaper are true this morning that you are going to tie these proposals to pay, you are obviously going to run into a problem with press coverage of it because you are going to run into the same problem Ken was talking about that happened last time.

Mr. **Sunquist**. I haven't made any comments on that. The earlier reports that I read have not been accurate, but without comment on that particular story, we do face a problem of trying to do what many editorials have stated, and that is to try to improve the system.

I don't expect you to have any answers, but one of the things that has happened is there have been leaks, and when the leaks occur—and that is not your fault, that is our fault, not necessarily here but others—when that occurs, then we are already up against the gun in terms of trying to defend something that hasn't even occurred and we are trying to have to prove that is not what we are saying. And I am frustrated in having spent several months on this, we are trying to make some changes I think will simplify it, that will perhaps make it easier for you to get an answer when there is a question asked of the ethics committee. They ought to be standardized. I don't know we are going to get them standardized with the Senate. That is a perplexing question.

I would like to spend more time on this. I appreciate your being here and would like to visit with you at some other time.

I am told we will take a five-minute recess then Ms. Martin and Mr. Obey will be back. Thank you.

[Recess.]

Mrs. **Martin** [presiding]. I think we can start.

Representative Obey.

Mr. **Obey**. Thank you.

I guess I would simply comment. I think one of our problems is that we both seem to be driven by the lowest common denominator. When we try to compete, whether it is on capital gains or whether it is on the 1981 budget and tax choices, you remember the famous comment when the President had gotten a House Member's vote on the tax bill in return for a favor for his State, he said, "My vote can't be bought, but it can be rented."

The problem is when you get into those debates, I think leadership on both sides is imprisoned by the selling price that people on the margins on those issues are willing to extract. And I think that in the press you have all indicated that many times, the more respectable elements of the press are driven to run stories because of the aspects of competition.

I guess I have had a reputation in the Congress for not liking Congress, which is not true, but I guess I got the reputation because I have been involved in so many reform efforts and because I have been such an institutional critic. I think I have a reputation among the press as not liking the press because I have given more than one speech indicating my minimum regard for some of the activities of the members of the press. That isn't true either. I have a great deal of respect for the press.

The reason I criticize politics so much and the press so much is because I care deeply about both institutions, and I think our relationship really is in a sense a piece of the problem in this country, which is how we get through each day together as a society collectively, given our competing jobs and sometimes conflicting jobs, and that is a tough question.

I just have a comment and a question. I am going to engage in a little bit of introspection you suggested when you talked about Bob Matsui a few minutes ago.

We wrote the rules which now govern the House in 1977. I was Chairman of the committee that wrote those rules. And we wrote them not in isolation. We did what we are doing today. We asked the press to comment; we asked other people to comment, and they did. And then we spent $50,000 and we ran a public opinion poll to decide what it is that the public wanted.

We asked about the question of whether they wanted absolute prohibition of some practices or whether they would be satisfied with disclosure. Because we were advised by a number of members of the press as well as lots of other people that we weren't smart enough to draw rules that could affect the conduct or define conduct for 535 very different people, and we ought to simply rely on disclosure. So we did that, even down to the question of honoraria and how that ought to be disclosed. And so we felt pretty comfortable.

In fact, at the time, most of the criticism came in the other direction. The rules we adopted were too "Common Cause-ish" and too tough. We were even told that by several members of the press in columns they did, one occurring on the day of the vote, for instance.

One of those columns specifically attacked us for not having an exemption for book royalties. We did. But the reporter who wrote the column didn't know it.

And now we have a strange situation, when I see the way my own state press covers the disclosure that we provided. The purpose of disclosure was not to measure net income or wealth; it was to measure potential conflicts of interest. And yet we see that virtually every story written on the Wisconsin delegation focuses, and has for a long time, exclusively on the question of how much people made from speeches rather than taking a look at the fact that a number of Members of the delegation have substantial holdings in industries that are highly regulated by the government and some which are not but probably ought to be.

Never have I seen an effort to in any way track whether votes that were cast reflected in any way those personal holdings. I personally doubt that they did. I know Members of the delegation and I would stand on their reputation. But I think that we have seen the lowest common denominator penetrate the kind of reporting that is done on financial disclosure.

I, for instance, disclosed a couple years ago the fact that I had two homes, one here and one in my district. I thought that was what people wanted us to do. But I saw one headline, the headline on top of the headline says, "Congressional Disclosure." Then the other headline said, "Obey Owns Two Homes." Well, most people think if there is a story there, that means there is something wrong to begin with. So I got some questions about that.

So I guess I have come to wonder whether or not Norm Ornstein isn't right when he said the very fact that we disclose in order to try to reassure and to give people an opportunity to determine whether or not there is a conflict or not in fact inures to the discredit of the institution, because the disclosure automatically implies that something is wrong, and adds to the public's concern about the Legislative Branch. I don't like the implication of that conclusion, but I tactically think that perhaps it is correct.

But the other thing I want to ask about is this. You may remember that a couple years ago I said about the dumbest thing I ever said in my life. I was called by a reporter at about midnight when we were about to debate the entire continuing resolution two years ago. The major item in our conference on the foreign aid bill, for three weeks, had been whether or not we were going to adopt an amendment pushed by the Senate, insisted on by elements within the Administration, which would have cost the taxpayers $8 billion because it involved writing down loans which foreign countries owed the United States.

And so when I got a call from a reporter, she said, "I would like to talk to you about that $8 million item in the conference report."

I said, "You mean the $8 billion item."

She said, "No, $8 million."

I said, "What do you mean?"

She said, "You know that school for Jewish refugees."

I said, "Oh." I said, "What about it? You ought to really talk to Senator Inouye or Kasten because this was a Senate item and I don't know all that much about it. It's one of those items we finally acquiesced in in conference."

"Well," she said, "Don't you think you have an obligation to know what's in your bill?" She said, "And besides, the Administration is against that item."

I said, "Are you kidding?" I said, "The administration has been breaking my arm for two weeks trying to get me to buy an $8 billion item, and I am supposed to take them seriously about their concern about the taxpayers if they are opposing a lousy $8 million item?"

What came out in the story was only the lousy $8 million without reference to the $8 billion. I admit it was a dumb thing to say. Every dollar is important, I recognize that, and I deserved a kick in the tail for it and I got it.

But what bothers me is that I had held briefings with members of the press. I had walked them through what this cost the Treasury. I could never get word one written in the press about that $8 billion item. And you know the funny thing? Both of them were supported and lobbied for by the very same people. And that is what amazed me.

I never understood how that $8 billion boondoggle could escape press attention, public attention because it didn't capture the press attention, but because one dumb Congressman in a weak moment at midnight said a stupid thing on a much smaller item in the bill, for weeks we debated that and the press said, well, you know, this is a special item, you have only got this one school. Baloney. We have over 30 of them.

Congressman Hamilton and I have tried to stop funding for a number of them and have had no attention paid to that question when it involves much larger items. But something which is more exciting, like that $8 million item, gets covered. I am not saying it shouldn't have. It was a legitimate story, but I can't figure out why we can't get coverage of the $8 billion stories around here with as much zeal and as much chuckling as they deserve as well. I admit the story is more complicated. It is also a hell of a lot more expensive to the taxpayer.

I am curious as to what there is in the American psyche, in the American political system, in the minds of reporters, that will enable a story like that to ride for weeks and weeks and weeks while the other one isn't even whispered and the public today still doesn't know that $8 billion of their tax money was just kissed away in a decision that I still think today was stupid.

So that is again another rhetorical question. But it isn't rhetorical; it is real because it has $8 billion worth of consequences.

Ms. FRITZ. I will answer your rhetorical question. You sort of answered it yourself.

It was part of a CR, right? And everyone was covering the major issues plus there is always the standard story of what are the little items in the CR people got in for their own friends.

The process as it has changed in the last couple of years, because there have been no CRs and the appropriations process is going on in sort of the usual way, you are seeing reporters covering the appropriations process for the first time this year and last year.

Mr. OBEY. But why in the same bill would people be so titillated by an $8 million item and refuse to write one word about the $8 billion item in the same subcommittee, same bill, same day, same vote?

Mr. BODE. There is no good answer to your question except to say sometimes the little titillating item like the $2000 toilet seat or the $500 coffee maker or the $800 wrench are the hook that gets you into something very important and prolongs examination in the press and leads to something like the examination over the defense procurement scandals and so forth. Sometimes it works the other way.

Mr. **Obey**. I guess the reason I raise it is because we have the same issue at stake in the conference again this year. I wonder if anyone will follow it up this time around. Only this time the issue is over whether we are going to lose about a billion-and-a-half dollars.

Mr. **Bode**. Sara will follow that one.

Mr. **Oliphant**. Isn't it an accurate observation that over the last two decades, that the news media's attention to the appropriations process has dropped off markedly, despite the fact that in 1971 when I first came here you used to have to wait for three or four months before you even got the record of the secret hearings of the appropriations subcommittees. It was all private in those days and yet each bill got, from my memory, much more attention than appropriations matters get today.

There was a score-card effect in the press that sort of tracked the general nature of the government. And except for a few specialty publications today, that has all but ended. The result, of course, is people go looking for nuggets and that is why your experience happened.

Ms. **Fritz**. I think coverage of the appropriations process is going back up. I think you are going to find it easier to get those stories talked about.

Mr. **Obey**. I would bet you not, because the problem is, it is a complicated story to explain. And so my point is, what I am concerned about is this. I am not only concerned about what the public knows; I am concerned about the effect of that kind of coverage on the Congress itself. Because if Members know that because a story is complicated it is just not going to be picked up, that means that the energy that they put into fighting a turkey like that, the effort they make to try to alert people, sooner or later is going to be dropped, unfortunately, because they say, "So what? I get a double hernia and nothing happens anyway, I don't get anybody's attention on it." And if you don't get the attention on the outside, you don't have the votes on the inside to stop it. So I would suggest I don't mind people looking at the hole in the doughnut as long as they also look at the doughnut.

Ms. **Martin**. I am sure as chairman of that subcommittee, you will make sure they have all the facts needed and there will be discussion on both sides.

Richard Harwood, who did a piece Sunday in the Post, quoted de Tocqueville who said, "In 1836, the journalists of the United States are generally in a very humble position, with a scanty education and a vulgar turn of mind. The characteristics of the American journalist consist of an open and coarse appeal to the passions of his readers. He abandons principles to assail the characteristics of individuals, to track them into private life and disclose all their weaknesses and vices. Nothing can be more deplorable."

I think de Tocqueville actually over all would be pleased at the progress. I suspect both sides get a bit thin-skinned at times.

I still have a general view of the great headline in all of your papers or on television, "Lynn Martin Wonderful," again is hardhitting news, so there might be a slight difference there. But I think this has been very useful.

The world is awed by the free press we enjoy and the free Congress we enjoy. So for all we may be doing wrong, there must be a few things we are doing right, and for your help in trying to make sure we do more things right and for letting us say some of the things that might be wrong, we thank you very much on behalf of the committee.

Thank you.

[Whereupon, at 12:25 p.m., the committee adjourned.]

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